SUPREME COURT, U. S.

73-230

MICHAEL RODAK, JR., CLERK

In The

Supreme Court of the United States

October Term, 1973

No. A-1154

NEW JERSEY CITIZENS FOR CLEAN AIR, INC., et al.,

Petitioners,

vs.

NEW JERSEY SPORTS AND EXPOSITION AUTHORITY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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In The

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No. A — 1154

NEW JERSEY CITIZENS FOR CLEAN AIR, INC., ET AL.,

Petitioners,

vs.

NEW JERSEY SPORTS AND EXPOSITION AUTHORITY,

Respondent.

Petition for a Writ of Certiorari to the Supreme Court of New Jersey

The petitioners New Jersey Citizens for Clean Air, Inc., Save the Meadowlands Coalition, Citizens Committee of Hudson County, Hudson County Citizens for Clean Air, Hudson River Fisherman's Association, Weehawken Environmental Committee, D.E.E.R., Inc., Save the Palisades Association, John Rutherford Chapter of Daughters of the American Revolution, Citizens for Conservation, A.C.T., C.A.P.A.B.L.E., Raritan Valley Environmental Council, Garden Club of Somerset Hills, Hoboken Environment Committee and CAPCOM, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of New Jersey entered in this proceeding on February 5, 1973.

Opinion Below

The opinion of the New Jersey Supreme Court is reported at 62 N.J. 248, 300 A.2d 337 (1973). The findings and recommendations of the Hackensack Meadowlands Development Commission and the New Jersey Department of Environmental Protection are not reported. Copies of the New Jersey Supreme Court's opinion (264a)* and its denial of petitions for rehearing (298a-299a), the relevant sections of the agencies findings of fact and recommendations (244a) and the decision of the Commissioner of the New Jersey Department of Environmental Protection (262a) are set forth in the Appendix at the pages indicated.

Jurisdiction

This suit was brought as an appeal to the New Jersey Supreme Court by direct certification from state administrative agency findings and recommendations arising from environmental hearings ordered by that Court to be held jointly by the Hackensack Meadowlands Development Commission and the New Jersey Department of Environmental Protection in New Jersey Sports and Exposition Authority v. McCrane, 61 N.J. 1, 292 A.2d 545 (1972). The judgment of the New Jersey Supreme Court was entered on February 5, 1973. In re Sports Complex in the Hackensack Meadowlands, 62 N.J. 248, 300 A.2d 337 (1973). A timely petition for rehearing was denied on March 6, 1973, and a re-petition for rehearing was denied on May 2, 1973. In view of the uncertainty of which denial begins the 90

* Page numbers suffixed by "a" refer to Appendix.

Jurisdiction

day period within which this petition for certiorari must be filed, an application for a 60 day extension of time to file was made to Justice William G. Brennan, Jr., Circuit Justice for the Third Judicial Circuit. This application was granted, making the new due date for this petition August 3, 1973. This petition was filed by that date. This Court's jurisdiction is invoked under 28 U.S.C. Section 1257(3).[1]

Questions Presented

1. Whether the construction of a complex source of air pollution, such as proposed in the present case, is illegal in a state whose implementation plan does not provide for review and control of such complex sources to insure that such sources do not cause violations of federal ambient air quality standards as established in the Federal Clean Air Act., 42 U.S.C. Section 1857 et seq. and regulations promulgated thereunder?

2. Whether the construction of a complex source of air pollution, such as proposed in the present case, is illegal in a region in which the above federal ambient air

[1] "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

* * *

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of or commission held or authority exercised under the United States."

quality standards are not currently being met for any automobile related air pollutant, and there is no valid implementation plan preventing the further degradation of current air quality levels?

3. Should this Court reverse a state supreme court decision affirming state agency findings, when said decision may jeopardize petitioners' substantive and procedural rights under the Federal Clean Air Act, 42 U.S.C. Section 1857 et seq. by allowing construction of the proposed complex sports which may cause violations of federal ambient air quality standards, and said decision can be shown to be unsupported by either the evidence presented or the factual and legal propositions relied upon by the state court in making its affirmance?

Statutory Provisions Involved

Clean Air Act, an amended, 42 U.S.C. Section 1857 et seq.

As the provisions involved are lengthy, they are set out in the Appendix at 1a together with pertinent regulations. The statute may be found at Volume 9 of the United States Code, page 10178 (1970 ed.).

New Jersey Sports and Exposition Authority Law, N.J.S.A. 5:10-1 et seq.

This statute is also set out in the Appendix at 73a.

Statement of the Case

Introduction

This suit concerns the construction of a massive sports complex in the Hackensack Meadowlands in Northeastern New Jersey. At this time, it is proposed that the complex include a football stadium and a horse race track. Future development of a "theme park," (such as Disneyland) is contemplated. There is to be a parking facility for 25,000 cars and 400 buses for the football stadium and race track; this has been guaranteed in the lease between the defendant New Jersey Sports and Exposition Authority and the New York Giants, a professional football team, which is to be the prime user of the football stadium. The stadium will contain 75,000 seats. The Chairman of the Sports Authority has stated it is hoped that other activities, besides football, will keep these 75,000 seats filled on a year round basis. See discussion of third reason for granting the writ, infra.

The Meadowlands are a low lying, coastal wetlands area not served by such mass transit facilities as trains or subways. Thus, when any event takes place at the complex that will even partially fill the 25,000 car parking lot, thousands of cars will travel from the New York City metropolitan area, resulting in hundreds of thousands or perhaps millions of vehicular miles traveled in the area surrounding the sports complex for each event. At the stadium itself, up to 25,000 cars will have to enter and leave one central point within the space of a few hours. This entrance and exit will have to be accomplished over what is currently a quite sparse road network surrounding the site.

Statement of the Case

The air quality in the area of the sports complex site is currently among the worst in the nation with regard to automobile related pollutants. The air quality presently exceeds federal levels for carbon monoxide, hydrocarbons, nitrogen oxides, oxidants and particulates (Excerpts from Draft Impact Analysis, 300a-301a). According to the testimony of the Sports Authority's own expert, federal levels will still be exceeded for all five pollutants in 1975 when the sports complex, if approved, would begin operating (T. XXIV F2-F4). It is so poor that the Administrator of the United States Environmental Protection Agency has imposed, pursuant to the requirements of the Federal Clean Air Act, a transportation control plan to reduce the vehicular miles traveled in this area 68% by 1977, a plan which the Administrator himself deems to be severe and perhaps unworkable. This is because there is very little mass transit available in this area and the area's day to day existence revolves around the automobile. See generally, 38 Fed. Reg. 17782 et seq. (July 3, 1973) (140a).

The plan has been criticized from many quarters, particularly by Richard J. Sullivan, Commissioner of the New Jersey Department of Environmental Protection, because of the severe hardship it would impose on citizens living in this area. Commissioner Sullivan has also according to recent newspaper reports, apparently taken the position that the plan cannot legally be imposed, and that even a 68% reduction in vehicular miles traveled could not achieve the 1975 primary air quality standards. See New York Times, June 23, 1973 and July 19, 1973 (311a-314a).

Statement of the Case

This background should be considered with the fact Commissioner Sullivan, who now says that the federal ambient air quality standards cannot be achieved in this area, was the same state official who approved the hearings being challenged here and made possible a facility that will draw up to 25, 000 cars from perhaps hundreds of miles away an undetermined number of times per year.

The statute that created the New Jersey Sports and Exposition Authority (hereinafter Sports Authority) which will build and operate the sports complex, the New Jersey Sports and Exposition Authority Law, N.J.S.A. 5:10-1 et seq., set forth in the Appendix at 73a, was attacked by numerous groups in New Jersey Sports & Exposition Authority v. McCrane, 61 N.J. 1, 292 A.2d 545 (1972) (hereinafter McCrane). Petitioners were granted leave to appear in McCrane as amicus curiae to represent interest of the petitioning organizations in the air quality aspects of the case. [2] The

[2] This grant of standing by the New Jersey Supreme Court to the organizations and its members includes petitioners' standing to raise federal issues under Sierra Club v. Morton, 405 U.S. 727, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972). Section 304 of the Clean Air Act, 42, U.S.C.A. Section 1857h-2 provides expressly that certain types of citizen suits may be brought under certain guidelines. However, subsection (e) thereof provides that that section shall not restrict any right any person may have under any statute or common law to seek any relief, including relief against the Administrator or a state agency. Giving this section the liberal construction required by the National Environmental Policy Act, 42 U.S.C.A. Section 4321 et seq., it should be seen that this section preserves rights to sue to protect rights created under the Act, so long as the Act does not specifically regulate a given type of suit because of the expected frequency of litigation thereof. The Supreme Court of New Jersey has

(Cont'd)

constitutionality of the statute was upheld, but the Court noted that Sections 5(x) and 23 of the statute required that the Sports Authority "consult" with the Hackensack Meadowlands Development Commission and the New Jersey Department of Environmental Protection (hereinafter Agencies) so that the sports complex would not prevent the maintenance and preservation "of the delicate environmental balance of the Hackensack Meadowlands . . . " McCrane, 61 N.J. at 32, 292 A.2d at 561. Accordingly, the Court ordered environmental hearings to be held, from which a record should be compiled so that review of those hearings could be taken directly to the New Jersey Supreme Court to determine the adequacy thereof. At these hearings, petitioners raised the issue, inter alia, of the applicability of the Federal Clean Air Act, as amended, 42 U.S.C. Section 1857 et seq. (hereinafter "Act") to this undertaking. In ordering the hearings, the New Jersey Supreme Court intended that they result only in the selection of a site for the sports complex that would be least environmentally damaging. However, the Court later noted that consideration of the issues arising under the Act had been proper.

(Cont'd)

determined in its opinion below that rights under the Act may be protected in a state suit challenging the construction of traffic generating facilities, and the vital purpose of the Act would be frustrated if the right of citizens to sue on causes of action unspecified in the Act were disallowed. Moreover, while this specific action does not involve a federal official or agent, the liberal standing requirements of Sierra Club v. Morton, supra, as recently restated in Interstate Commerce Commission v. SCRAP, 41 L.W. 4866 (Sup. Ct. 6/18/73), that plaintiffs or their members properly plead that they have been injured in fact, have been met in this case.

> "A considerable part of the hearing was concerned with projections of the impact of the complex on air quality from the broad point of view of the public health . . . our remand was sufficiently comprehensive to include the broader issue and the hearing agencies rightly concerned themselves with it."

Opinion at 5, 300 A.2d at 340 (269a).

At the hearings it was established that operation of the sports complex would result in concentrations of carbon monoxide well above the one-hour standard of 35 parts per million (ppm) set by the Clean Air Act as the level above which health may be endangered. Thus one expert testified that using the authority's own computer model, 18,000 cars using the complex in 1975 would cause carbon monoxide concentrations of 76 ppm in the center of the proposed parking lot. (T. XX, B-3, B-4). Another witness drew a sketch showing that almost all areas of the parking lot would exceed 35 ppm if 22,500 vehicles used the lot (Ex. A-16). In adddition, the unrebutted testimony established that federal levels for nitrogen dioxide would also be exceeded (T. XVI, D-6).

The Authority's own expert confirmed this testimony. His computer predictions showed concentrations of 115 ppm for 25,000 cars and 102 ppm for 18,330 cars (Ex. SA-34). In spite of this evidence, the Agencies found that federal clean air standards would not be violated. The following, however, should be considered:

Statement of the Case

1. The Sports Authority itself indicated that federal clean air standards for all five pollutants (three automobile-related) measured by the New Jersey Department of Environmental Protection (one of the hearing agencies) in the general area of the sports complex were already well above the annual average standards allowed by the Act and regulations thereunder (Excerpts of Draft Impact Analysis, 300a-302a). Thus, even if the Agencies were correct in their findings that one hour standards for carbon monoxide would not be exceeded, they took the position that further degradation of already unhealthy air was permissible.

2. The Sports Authority's expert himself said that primary standards could be violated if his suggested traffic controls were not utilized. The controls have not been made mandatory (T. XXV, G-14 to G-20; 213a-218a).

It would thus appear that in addition to the disputed facts, the evidence put forth by the Sports Authority itself and the findings of the Agencies indicate that federal standards are currently being violated, and as such, any additional pollution could only exacerbate a presently unhealthful and unlawful condition.

Petitioners also raised the point during the hearings that the implementation plan (hereinafter "Plan") required by the Act, 42 U.S.C. Section 1857c-5 et seq. to be formulated by the State and approved by the United States Environmental Protection Agency (hereinafter "E.P.A.") did not take into consideration the sports complex or the development of the

Hackensack Meadowlands in general.[3] The Act and regulations thereunder require that such an implementation plan must provide for the review by the State of complex sources of auto-related air pollution and the imposition on such sources of land use and transportation controls necessary to insure the ability of the State to attain and maintain federal air quality standards. 42 U.S.C. Section 1857c-5(a)(2)(B) and (D) (16a); 40 C.F.R. Section 51.1(n); 38 Fed. Reg. 6279 (March 8, 1972) (117a); 38 Fed. Reg. 9599 (April 18, (1973) (128a).

The Agencies' findings and recommendations were approved, with modification irrelevant to this appeal, by the Commissioner of the New Jersey Department of Environmental Protection on October 16, 1972. The findings and approval were appealed to the New Jersey Supreme Court, which heard oral argument on December 18, 1972.

The Court affirmed the Agencies' findings and the Commissioner's approval thereof on February 5, 1973. In re Sports Complex in Hackensack Meadowlands, 62 N.J. 248, 300 A.2d 337 (1973). As to the applicability of the Act to the sports complex, the Court said "Certainly the Sports Authority will be subject to the Federal Clean Air Act" (Opinion at 7; 300 A.2d at 340; 271a). It approved the Agencies' findings that the federal air quality standards would not be violated in 1975. Id. It also recognized that the primary

3 A "new city" is contemplated in the Meadowlands with a population of 185,000 and employment for 200,000 people (T. XVI C-8).

responsibility for assuming that these standards would be met and maintained was on the State through its Implementation Plan, and that "New Jersey has adopted such a plan which has been approved by the Federal Administrator" (Opinion at 8; 300 A.2d at 341; 271a).

Another major basis of the Court's judgment was that:

> "The record indicates that the National Emissions Standards Act (42 U.S.C.A. Section 1857 f-1 to f-8) mandates virtual elimination of emissions of carbon monoxide in all automobiles manufactured during and after model year 1975 . . . . In the development and operation of the sports and exhibition complex the Authority must conform to these (federal air quality) standards."

Opinion at 8; 300 A.2d at 341; 271a-272a).

The Court thus rested its judgment that the construction and operation of the sports complex would not be in violation of the Act on three bases:

1) That the citizens of the state were protected from violations of the Act by an approved, valid state implementation plan.

2) That the federal emission limits imposed on new cars in 1975 would be met.

3) The Agencies' findings that the air quality standards would not be violated.

On February 15, 1973, petitioners submitted a timely petition for rehearing indicating that the state's plan had never been approved in several respects, notably in its control plan for nitrogen dioxide. In addition, there was no plan for carbon monoxide and photochemical oxidants since the state had received a two year extension to 1977 to submit a plan as to these pollutants. (Petition for Rehearing at 5; 277a). Moreover, the petition went into some detail to show that the approval for all major automobile related air pollutants rested on two year extensions of the deadline for meeting the standards. The petition then pointed out that all plans with such extensions, including New Jersey's, were invalidated by the United States Court of Appeals, District of Columbia Circuit, on January 31, 1973, in Natural Resources Defense Council, Inc., et al. v. Environmental Protection Agency, 475 F.2d 968 (D.C. Cir. 1973)(hereinafter N.R.D.C.) (Petition for Rehearing at 7; 279a). This was because the Administrator of the E.P.A. had acted beyond his statutory authority in granting these extensions. The Court ordered that the states involved resubmit plans which met the statute's requirements. The petition for rehearing also pointed out to the Court that according to a number of highly respected scientific reports and to statements of the auto makers themselves the 1975 automobiles would probably not meet the 1975 emissions standards. This petition was denied on March 6, 1973.

On March 8, 1973, the Administrator of the E.P.A. published an announcement at 38 Fed. Reg. 6279 (117a) disapproving all state implementation plans to the

extent that they did not provide for review of and legal authority for the control of complex sources of air pollution, which specifically include sports complexes. Requirements for what state implementation plans must provide for review of such sources were proposed at 38 Fed. Reg. 9599 (April 18, 1973) (128a) and made final in an announcement at 38 Fed. Reg. 15834 (June 18, 1973), to be effective on June 18, 1973. The argument was then pressed in a repetition for rehearing submitted on the basis of this clarifying regulation that the sports complex could not proceed without being subject to the review and controls required under the Act and regulations thereunder. This repetition was submitted on March 19, 1973 and denied on May 2, 1973. At that time, appellants were preparing a memorandum to the Court on the effect of yet another development which eroded the validity of its decision. The E.P.A. gave a one year extension, until 1976, to the auto makers to comply with the 1975 emission standards, see 38 Fed. Reg. 10317 (April 26, 1973) which the Court had assumed would be met in 1975 (Opinion at 8; 300 A.2d at 341; 271a-272a). This memorandum was never submitted because the Court's denial of the second petition for rehearing came before the memorandum was filed.

Before proceeding to show that the federal questions here presented were properly raised and preserved in the state proceedings, the nature of these proceedings should be understood. The hearings below were ordered to be held by the New Jersey Supreme Court because of a mandate in the state statute that the Sports Authority "consult" with the Agencies to

determine the site within the Meadowlands that would be the least environmentally damaging. When petitioner suggested that the agencies should determine whether there should be a sports complex at all, Special Counsel for the Agencies, who presided over the hearings, stated that he thought there would be a sports complex somewhere in the Meadowlands, and stated, "The question is today whether or not this particular site is environmentally acceptable" (T. I, 85; 202a). The Court itself noted that the decision to locate the sport complex in the Meadowlands had been made by the New Jersey legislature and the Court felt it could not question the wisdom or policy of that decision (Opinion at 56; 300 A.2d at 340; 266a).

While petitioners raised the issues the Act presented in this context at the hearings, and the New Jersey Supreme Court approved the Agencies' consideration of these issues, it seems clear that the intended function of the agencies was one of fact finding only. While legal issues were raised tangentially below, they could not be properly decided except on the appeal to the state supreme court. As will be seen, infra, while the Agencies had a limited fact finding function only, their findings were intertwined with questions of law.

The matter was further complicated by the fact that the court specified no procedures by which legal issues, federal or otherwise, were to be raised and presented to that court, and there are no state statutes or rules of court that provide procedural guidelines in this unique context. Thus, the questions presented here were formally presented to the New Jersey Supreme Court in petitioners' Brief, Supplemental Brief, and Petitions for Rehearing. In view of this, petitioners have requested

the clerk of the court to certify its briefs along with the record.

Following is a summary of the questions presented and the manner in which they were raised and decided:

1. The question of the necessity of consideration of the sports complex pursuant to a valid implementation plan was raised repeatedly below in testimony at the hearings. On cross examination of a Sports Authority expert, a letter from the E.P.A. to Governor Cahill was read to the witness indicating that the E.P.A. wanted current development information for the Meadowlands for purposes of review of the plan. The letter indicated that of special importance were development plans for the period prior to and immediatley following 1975 (T. VIII. D-10; 202a-203a). The witness was responsible for a "draft impact assessment," that purported to show the environmental impact of the complex in the area. The question was in the context of whether this assessment considered how the sports complex would affect New Jersey's ability to implement its responsibilities under the Act (T. VIII, D-14; 204a). An expert witness for petitioners, an official of the E.P.A. office having jurisdiction over the Hackensack Meadowlands area, said that New Jersey's plan did not include the sports complex or general development of the Meadowlands. Specifically, he said that the traffic effects of the complex would be needed to determine whether New Jersey's Plan would be adequate to insure compliance with the federal standards (T. XVIII, C-1 to C-13; 204a-213a).

Petitoner's Statement of Exceptions and Objectons to the Hearing Officer's Report and Recommendations, specifically recounted this testimony in objecting to the agencies findings with regard to the Act (219a).

In Point III of petitioners' main brief to the New Jersey Supreme Court, contending that completion of the sports complex would violate rights created under the Act, the statute, its legislative history, and regulations promulgated thereunder were examined in considerable detail in arguing that the Act itself required that the sports complex was subject to the Act. It was further argued that the Act required that the sports complex must be subject to the imposition of land use and transportation controls that would prevent the sports complex from causing pollution levels in excess of federal standards (Pb at 85-96; 224a-236a). This point was further treated in more detail in a supplementary brief the Court allowed petitioners to submit to clarify issues that had arisen at oral argument.

The Court treated the issue of the sports complex compliance with requirements under the state's plan and the validity of that plan with the statement that "New Jersey has adopted such a plan which has been approved by the Federal Administrator" (Opinion at 8; 300 A.2d 341.

On March 8, 1973, the Administrator of the E.P.A. published at 38 Fed. Reg. 6279 an announcement that all state implementation plans, including New Jersey's,

> "must be disapproved to the extent that they do not contain provisions which will permit the review, and provide the authority to prevent the construction, modification, or operation of complex sources at a location where emissions associated with such source would result in violation of a national standard or the States control strategy" (120a).

It was argued in a petition for rehearing submitted on March 19, 1973 that this had the effect of clarifying prior law and supporting the contentions made earlier by the petitioners that the Act itself mandated that the sports complex could not legally proceed because the state did not have a plan that would have insured that the sports complex would not cause violations of the federal standards. In other words, the requirements of this regulation should have applied to some projects begun before the promulgation of the regulation, because it was an interpretation of the terms of the statute, which were binding on projects begun subsequent to the amendments to the Act of 1970, which would include the sports complex. This petition was "duly considered" by the Supreme Court and denied on May 2, 1973.

2. The evidence presented by the Sports Authority (Draft Impact Analysis, 300a) and the disapproved state implementation plan itself (201a-1 et seq.), indicate that several federal ambient air quality standards were currently not being met. Petitioners argued that the policy of nondegradation of existing qualities of air established by Sierra Club v. Ruckleshaus, 344 F. Supp.

253 (D.D.C. 1972), aff'd__U.S. ___, 93 S.Ct..__, 31 L.Ed. 2d 636, 41 LW 4825 (June 11, 1973), applied to prevent further degradation of air that was already in violation of federal air quality standards. (See Pb 90 et seq.; 229a et seq.) That this was a proper interpretation of that policy is supported by a transportation control plan that has been imposed on New Jersey by the Administrator of the E.P.A. because of the State's continued failure to propose one of its own, announced at 38 Fed. Reg. 17782 (July 3, 1973; 140a). That plan proposes that no new parking facilities may be located in the New Jersey portion of the New Jersey-New York-Connecticut Interstate Air Quality Control Region (in which the sports complex is to be located) without a permit. No such permit may issue where this would result in an increase in vehicular miles traveled "within any area the air quality of which fails to meet applicable federal air quality standards" 38 Fed. Reg. at 17790; (181a). This is clearly applicable to the instant case, and the Sports Authority has obtained no such permit.

When New Jersey's Implementation Plan was invalidated, petitioners requested in the Re-petition for Rehearing, further consideration of this question in light of the fact that there was no longer an approved plan; Sierra Club v. Ruckelshaus decided that degradation of current air quality could not be allowed in such a plan.

3. The question of whether the operation of the sports complex would cause violations of the federal air quality standards was raised repeatedly by petitioners in the hearings below. The opinion of the New Jersey Supreme Court should suffice: "A considerable part of

the hearing was concerned with projections of the impact of the complex on air quality from the broad point of view of the public health .... It is also argued that projections of air pollution emanating from the completed project indicate that standards established under the Federal Clean Air Act (42 U.S.C.A. Section 1857, et seq.) will be violated ...." Opinion at 5-6; 300 A.2d at 340; 269a). The court affirmed the Agencies' findings which stated that the standards would not be violated, applying a standard of judicial review requiring petitioners to show that the findings had been palpably arbitrary (Opinion at 4; 300 A.2d at 337; 267a; McCrane, 292 A.2d at 561). Point II of petitioners' main brief argued in some detail that a proper scope of judicial review and application thereof required a reversal of the findings below. In addition to disputed questions of technical facts, the Brief pointed out, inter alia, that the Agencies knew, but did not consider that standards were already being exceeded and that they did not consider the impact of the complex on the surrounding region (Pb. 64-84; 221a-223a).

The question of whether the New Jersey Supreme Court should reconsider its decision in light of the fact that its premise that the citizens of the State were protected by a valid implementation plan had been subsequently eliminated by a Federal Court was put to the Supreme Court in a timely petition for rehearing on February 15, 1973, which was denied on March 6, 1973.

Reasons for Granting the Writ

I.

THE STATE COURT DECISION ALLOWING THE CONSTRUCTION AND OPERATION OF THE SPORTS COMPLEX CONFLICTS WITH THE FEDERAL CLEAN AIR ACT AND IS IN VIOLATION OF PETITIONERS' RIGHTS THEREUNDER.

Under the Act, every state was required to have an implementation plan which should have been approved by the E.P.A. by May 30, 1972.[4] Under N.R.D.C., supra, previously approved plans for several states were invalidated and new ones were required to be submitted and approved no later than April 15, 1973. Under the E.P.A.'s announcement of March 8, 1973 at 38 Fed. Reg. 6279 all state plans were disapproved to the extent that they did not contain provisions for the review and control of complex sources necessary to insure that they would not "result in a violation of a national standard or the State's control strategy." The States must resubmit plans which do contain such provisions no later than August 15, 1973. However, a valid plan may not be in force until as late as December 15, 1973. See Fed. Reg. 9599, 9600 (April 18, 1973).

4. All state plans were to be submitted to the E.P.A. by January 30, 1972. 36 Fed. Reg. 15486 (August 14, 1971). The Administrator was to approve or disapprove the plans within four months of that date. 42 U.S. C. Section 1857c-5(a)(2). If any plans were unsatisfactory, the Administrator was to take actions to insure the delinquent states were covered by proper plans as soon as possible. 42 U.S.C. Section 1857c-5(c).

Reasons for Granting the Writ

The Act created a substantive right to a minimum standard of clean air guaranteed to every citizen. See Pb. 88; Sen. Rpt. No. 91-1196 on National Air Quality Standards Act of 1970 at 4. It appears that the Act also created a "procedural" right for every citizen that complex sources of air pollution, the construction, modification, or operation of which might violate the citizen's substantive clean air rights, must be governed by a plan which would prevent such a violation. This right came into existence on May 30, 1972, on the date the Act requires that all plans must be approved. Petitioners contend that the sports complex is a complex source,[5] the construction, modification, or operation of which was commenced during a period in which such sources should have been controlled by a valid plan, and cannot proceed without violating these procedural and substantive rights enjoyed by petitioners and the public.

The state court failed to enforce these important federal rights, even though they are designed to protect public health, and approved this state project. Not only is the decision erroneous, but unless this court speaks

5. The term "complex source" includes (but is not limited to)

1. Shopping centers;
2. Sports complexes;
3. Drive-in theatres;
4. Parking lots and garages;
5. Residential, commercial, industrial, or institutional developments;
6. Amusement parks and recreation areas;
7. Highways;
8. Sewer, water, power, and gas lines.

38 Fed. Reg. 6279, 80 (March 8, 1973).

out, and affirms the very basic principle that federal law is to be obeyed, it is likely that states will ignore federal law (perhaps on authority of this case, if unreversed) in favor of local projects.

In this regard it should be noted that there are two actions presently pending which could have a substantial effect on this case and petitioners' rights thereunder. On July 26, 1973, a complaint was filed in the United States District Court for the District of New Jersey in which three individuals, Marianne Wuillamey, Barbara Eisler and James Drago are plaintiffs and David A. Werblin, director of the Sports Authority, and Richard J. Sullivan, commissioner of the New Jersey Department of Environmental Protection are defendants. This suit seeks to enjoin construction of the Sports Complex on the grounds that there is an unconstitutional inconsistency between the Federal Clean Air Act and the New Jersey Sports and Exposition Authority Act. In addition, the issue of the failure of the Sports Authority to obtain a permit is raised. A copy of the Complaint is set forth in the Appendix at 319a.

Also on July 26, 1973, a letter was sent on behalf of some of the petitioners herein to the Acting Administrator of the E.P.A. demanding that the agency take action to halt the sports complex for violation of the federally imposed traffic control plan requiring a reduction of vehicular trip miles in the northern New Jersey area. This letter (also set forth in the Appendix at 315a) is the notice required by Section 304 of the Clean Air Act, 42 U.S.C. Section 1857h-2(h), 40 C.F.R.

Section 54.1 et seq., preparatory to a citizen suit against the administrator.

It is submitted that both of these actions can, if adversely determined, provide additional and reinforcing reasons why this court should grant this petition, and it is therefore respectfully requested that decision on this petition be withheld until determination of the pending actions.

On the other hand, a favorable decision on these cases could make a ruling on this petition unnecessary.

II.

BECAUSE OF THE FREQUENCY WITH WHICH FACTUAL FINDINGS WILL BE MADE BY STATE AGENCIES UNDER THE CLEAN AIR ACT, THIS COURT SHOULD DETERMINE A PROPER STANDARD OF JUDICIAL REVIEW.

As noted, supra, the Act and regulations thereunder provide that if any complex source is to be located in an area where it might cause violations of air quality standards or impair the state's control strategies, the state's implementation plan must provide for review of such complex sources to insure that this does not occur. This review will be carried out by state officials or agencies; the E.P.A. is involved only to the extent of approving the Plan's provisions for the review. Thus, environmental hearings of the general type held below

will be required to be carried out in the future in every state.[6]

As such, there will be frequent and recurrent conflicts between the economic interests of promoters of the complex sources on one hand and the interests of the public in not having their health and welfare endangered by violations of clean air standards on the other.[7] Given the kinds of projects that may be involved in such hearings, the state and their agencies will often be under intense political and economic pressure to conduct pro forma reviews and impose minimal land use and transportation controls on these projects with consequent peril to the rights of the public.[8] The victims of this pressure will be the general

6. Petitioners stress that this statement does not imply in any way that the hearings below were adequate to satisfy the procedural requirements of the Act. These were highly unstructured proceedings which were not approved for adequacy by the E.P.A. as required by the Act. Petitioners argued below that these hearings, although extensive, were not adequate by any standard for any purpose.

7. The Administrator has promulgated national primary and secondary ambient air quality standards. The primary standard is a point beyond which air pollutants may not be concentrated without impairing the public health; the secondary standard protects the public welfare. 42 U.S.C. Section 1857c-4(b); 36 Fed. Reg. 8186 (April 30, 1971).

8. The present case could be considered a good example of this danger. The bill creating the Sports Authority was presented to and passed by the New Jersey legislature and signed by the governor in one day. The Supreme Court of New Jersey had to

(Cont'd)

public who will thereby lose their federal rights to healthy and nondestructive air. The national importance and implications of these conflicts are clear.

Even though the reviews mandated by the Act are to protect federal rights that will be substantially if not completely identical throughout the United States, it appears that the Act does not specifically provide a uniform standard of judicial review and does not authorize the Administrator to establish one. See Act, Section 110, 42 U.S.C. Section 1857c-5 (15a). The Act provides specifically for citizen suits in the federal district courts in given situations that do not appear to include challenges to reviews made by state agencies. Act, Section 304, 42 U.S.C.A. Section 1857h-2. However, that section also provides that

> "Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any emission standard or limitation or to seek any other relief (including

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(Cont'd)

order the Agencies to conduct hearings. Even then, despite the fact that the Court had expressly provided for direct review by it of the Agencies' findings, McCrane, 62 N.J. 1 at 33, 292 A.2d at 561 (1972), the Sports Authority proceeded full tilt and broke ground over two weeks before the oral argument. The day before oral argument, the Newark Star Ledger carried a front page article describing progress on the extensive development planned for the sports complex area. The Court indicated considerable displeasure with these developments at oral argument (305a-310a).

relief against the Administrator of a State Agency)."

42 U.S.C.A. Section 1857h-2(e) (64a).

This section may be construed to indicate that most or all judicial review of the state agency reviews of complex sources will have to be in the state courts. As matters stand at this point, then, without determination by this court, proceedings to protect uniform federal statutory rights will be subjected to judicial review under perhaps fifty or more different standards.

The standard of judicial review with which petitioners would have to contend to challenge the Agencies' findings in this case was that such findings be "palpably arbitrary." McCrane, 61 N.J. 1, 33, 292 A.2d 545, 561 (1972). While not specifically mentioning this standard, Justice Hall, concurring in part and dissenting in part, in the opinion ordering the hearings, said:

> "I agree with the majority as to the necessity for this precedent agency hearing and determination. What disturbs me is the tone of the opinion in speaking of it. I gain the impression therefrom that while the agencies must go through the motions, the proceeding can be a perfunctory, cut and dried one, with a foreordained result, with which no court would disagree." [9]

9. Justice Hall followed this immediately with an observation that is highly pertinent to the question of how closely hearing of this

(Cont'd)

61 N.J. 1, 65, 292 A.2d 545, 578 (1972).

In formulating a minimum standard of effective judicial review and, if need be, reviewing the factual basis of agency findings below, this Court would be well within the precedent of analogous measures it has taken in the past.

(Cont'd)

sort should be scrutinized.

> "Perhaps my alarm is accentuated by the majority's quotation from legislative committee testimony in support of the act, and especially that of the Director of the Department of Environmental Protection -- the state official having the duty to see to the protection of the environment -- stating as one reason for approval of the Authority act that the sports complex 'would help to give our State a little identity of its own.' This to me is not in keeping with the obligation of his office."

It is to be particularly noted that the Department of Environmental Protection, which this offical directed, was one of the hearing agencies below and he approved the Agencies' findings. This observation by a member of the reviewing court itself, coupled with the fact that that official is generally recognized as a vigilant protector of New Jersey's environment, is pursuasive evidence of the need to apply a liberal standard of judicial review when findings by the agency might run afoul of strong political and economic pressures to complete a project.

In this regard, it should be considered that administrative agency decisions that are quasi- legislative and quasi-judicial are invalid if based in whole or in part by political pressures. D.C. Federation of Civic Associations v. Volpe, 459 F.2d 1231 (D.C. Cir. 1971), citing 2 K. Davis, Administrative Law, Sections 12.01 et seq.

Reasons for Granting the Writ

In Brady v. Southern Ry. Co., 320 U.S. 476, 64 S.Ct. 232, 88 L.Ed. 239 (1943) the Court considered the Federal Employees' Liability Act, which created statutory federal rights in a broad class of employees to sue their employers in state courts. Because different judicial procedures in different states would lead to differing enjoyment of a federal right, the Court established a standard of evidence, which, if attained, would compel the submission of the case to the jury. A correct and uniform application of the FELA was also deemed necessary to protect federal rights thereunder and thus justified a review of the facts therein by the court in Brown v. Western Railway of Alabama, 338 U.S. 294, 70 S.Ct. 105, 94 L.Ed. 100 (1950) and Southern Pacific Co. v. Gileo, 351 U.S. 493, 76 S.Ct. 952, 100 L.Ed. 1357 (1956).

Under these particular circumstances, a court's ability to review facts made by state administrative agencies rather than courts to insure that valuable federal rights were being accorded an adequate level of judicial review would be appropriate. The theory of judicial deference to findings of fact by administrative agencies, as required by statutory mandate and sound judicial practice, rests on the assumption of experience and expertise in those agencies in determining questions of specialized facts which courts do not have. Gunther v. San Diego and Arizona Eastern Railway Co., 382 U.S. 257, 86 S.Ct. 368, 15 L.Ed. 2d 308 (1965). As noted, supra, it is unclear at this point what state agencies or officials will conduct reviews of complex sources. It is only clear there will be many of them in many

jurisdictions. It is, therefore, quite uncertain what their level of expertise will be. Given the importance of the rights involved and the uncertainty of the level of protection they will receive, this court should consider means of providing adequate protection for them though relatively liberal judicial review of factual findings.

III.

WITH REFERENCE TO THE INSTANT CASE, A REVIEW OF THE AGENCIES' FACTUAL FINDINGS IS APPROPRIATE BECAUSE: a) THE AGENCIES DID NOT CONSIDER CERTAIN LEGAL QUESTIONS THAT AFFECTED THE VALIDITY OF THEIR FINDINGS; b) THE FINDINGS WERE NOT BASED ON SUBSTANTIAL EVIDENCE; AND c) THE INTENDED USE OF THE PROJECT IS GREATER THAN PRESENTED TO THE AGENCIES.

a. The validity of the Agencies' factual findings were based on legal questions not considered.

The Agencies determined that the sports complex would not cause violations of the Act. However, they were well aware that all automobile-related air quality standards were currently being violated, and would be through 1990 (Excerpts of Draft Impact Analysis, 300a-303a). Petitioners raised the point that new sources of pollution could not be introduced that would exacerbate existing violations (Pb 90 et seq.; 229a et seq.). This point is supported by Sierra Club v.

Ruckelhaus, 344 F. Supp. 253 (D.D.C. 1972), aff'd ___ U.S.____, 93 S.Ct.___, 37 L.Ed. 2d 140 (1973) which established a policy of non-degradation of existing qualities of air. This point was argued in the New Jersey Supreme Court. Thus, the Agencies' findings that the Act would not be violated was a finding of law as well as fact. Also the Sports Authority's own expert witness, under redirect examination by counsel for the Authority, said that it was possible that the one-hour primary standard would be exceeded more than once per year, in violation of law, unless certain traffic control measures he advocated were taken (T. XXV, G-14 et seq.; 213a-218a). These were not required by the Agencies as a condition of approval: the hearing officers merely required "study". The policy of the Act is that transportation controls which can be implemented to prevent violations must be within the state's legal authority to impose to insure that such violations will not take place. The Agencies thus made the factual-legal findings that mere "study" was adequate to insure maintenance of air quality standards. Of course, such legal questions and mixed questions of law and fact do not enjoy the immunity from judicial review that do findings of fact supported by substantial evidence. See generally, 4 K. Davis, Administrative Law Treatise, Sections 30.01 to 30.14.

b. The Agencies' findings were not based on substantial evidence.

The Agencies accepted the Sports Authority's experts' computations of what air pollution levels at the

sports complex would be in 1975. However, basic fundamental data from which these computations were made, projected emission levels of smog-controlled cars as they aged, were taken from another individual who got them from an E.P.A. employee in North Carolina on the phone, who in turn got them from incomplete test results from a study being run by a private firm in California (T. XXII, C-2 to C-10). Without even exploring the issues of whether admission of such evidence denied a fair hearing to petitioners (which issues were argued in the state supreme court), petitioners challenged the reliability of such evidence. At the very least such unsubstantiated evidence was the only basis for the prediction of pollution concentrations made by the authority's expert witness. Certainly, such evidence is not the sort that should determine such vital issues as are presented here. Even assuming such shaky basic data to be correct, petitioners established that the Sports Authority's expert's calculations were incorrect on an independent ground, and he made recalculations on the witness stand, on a sheet of paper entered in evidence that established petitioners' contention that air quality standards would be violated.

c. The Agencies were not presented data on the full use of the facility.

The evidence presented by the Sports Authority to the Agencies was based only on use of the football stadium for the ten home games expected to be played there each autumn. However, newspaper reports of remarks made by the Chairman of the Sports Authority,

David Werblin, indicate that it is the intention of the Sports Authority to utilize the stadium to the greatest extent possible. "With good management we will have this stadium filled every day of the year." Home News (New Brunswick, N.J.), May 31, 1973, pg. 6.

> "Unfortunately, there has been an impression that we're building a facility for nine home football games. If I were a betting man, which I am, I'd bet that by 1980 there will be more soccer games than professional football games in the stadium.
>
> 'We're considering bringing in college football teams like Notre Dame for a game or two and Alabama for a game or two. The sightlines will be perfect for tennis. There are track and field and bowling, and we'll consider putting a bubble over part of the stadium and moving in parallel grandstands for boxing. There will be sport shows, dog shows . . .
>
> * * *
>
> 'There are facilities that have 450 uses a year, notably in Anaheim, Calif., and I hope we'll have something going on here almost every day.' "

New York Times, June 1, 1973, p. 29.

It thus seems apparent that the Sports Authority

was quite hesitant to present all the evidence to which it was privy through its Chairman. It seems clearly apparent that the agency findings below were not consistent with the overwhelming weight of the evidence which, in good faith, should have been presented, and this Court certainly has power not only to invalidate the hearings for their insufficency, but to make a contrary finding of fact. See Koppers, Co. v. United States, 24 Ad. L. 2d (Pike & Fisher), 900 (Ct. Cl. 1968).

IV.

WHEN THE ANSWERS TO THE SUBSTANTIVE QUESTIONS PRESENTED HERE ARE RESOLVED, AND IF CONSTRUCTION AND OPERATION OF MANY OF THE NATION'S COMPLEX SOURCES ARE FOUND TO BE IN VIOLATION OF THE ACT, THERE WILL BE A CLEAR AND PRESSING NEED FOR A UNIFORM RULE ON WHAT THE APPROPRIATE REMEDY FOR A GIVEN VIOLATION WOULD BE.

That an injunction against construction or operation issue until there were adequate assurances to the enjoining court that no violations would occur would seem the logical remedy. This has been found to be an appropriate measure involving many large scale projects under the National Environmental Policy Act, 42 U.S.C.A. Section 4321 et seq.

However, if it should be determined that injunctions are not an appropriate remedy to apply as a matter of

course, guidelines could be established for making as a condition precedent to the completion of projects a requirment that plans be altered to include the transportation controls envisioned by the Act incorporated into the on going project.

Of course, this petition is not the place to discuss in detail the mechanics of proper remedies. However, this is an important question that could be handled in further detail in a subsequent brief should the prayer for certiorari be granted.

Conclusion

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of New Jersey.

Respectfully submitted,

MEZEY & MEZEY

s/ Frederick C. Mezey
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In The

Supreme Court of the United States

October Term, 1973

No. A-1154

NEW JERSEY CITIZENS FOR CLEAN AIR, INC., et al.,

Petitioners,

vs.

NEW JERSEY SPORTS AND EXPOSITION AUTHORITY,

Respondent.

APPENDIX

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Clean Air Act
42 U. S. C. §1857 Et Seq.
Chapter 15B Air Pollution Control

SUBCHAPTER I.—AIR POLLUTION PREVENTION AND CONTROL

§ 1857. Congressional findings; purposes of subchapter

(a) The Congress finds—

(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation;

(3) that the prevention and control of air pollution at its source is the primary responsibility of States and local governments; and

(4) that Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution.

(b) The purposes of this subchapter are—

(1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;

(2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;

(3) to provide technical and financial assistance to State and local governments in connection with the development and exe-

cution of their air pollution prevention and control programs; and

(4) to encourage and assist the development and operation of regional air pollution control programs.

July 14, 1955, c. 360, Title I, § 101, formerly § 1, as added Dec. 17, 1963, Pub.L. 88-206, § 1, 77 Stat. 392, renumbered and amended Oct. 20, 1965, Pub.L. 89-272, Title I, § 101(2), (3), 79 Stat. 992; Nov. 21, 1967, Pub.L. 90-148, § 2, 81 Stat. 485.

§ 1857a. Cooperative activities—Interstate cooperation; uniform State laws; State compacts

(a) The Administrator shall encourage cooperative activities by the States and local governments for the prevention and control of air pollution; encourage the enactment of improved and, so far as practicable in the light of varying conditions and needs, uniform State and local laws relating to the prevention and control of air pollution; and encourage the making of agreements and compacts between States for the prevention and control of air pollution.

Federal Cooperation

(b) The Administrator shall cooperate with and encourage cooperative activities by all Federal departments and agencies having functions relating to the prevention and control of air pollution, so as to assure the utilization in the Federal air pollution control program of all appropriate and available facilities and resources within the Federal Government.

Consent of Congress to compacts

(c) The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for (1) cooperative effort and mutual assistance for the prevention and control of air pollution and the enforcement of their respective laws relating thereto, and (2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements or compacts. No such agreement or compact shall be binding or obligatory upon any State a party thereto unless and until it has been approved by Congress. It is the intent of Congress that no

agreement or compact entered into between States after November 21, 1967, which relates to the control and abatement of air pollution in an air quality control region, shall provide for participation by a State which is not included (in whole or in part) in such air quality control region.

July 14, 1955, c. 360, Title I, § 102, formerly § 2, as added Dec. 17, 1963, Pub.L. 88-206, § 1, 77 Stat. 393, renumbered Oct. 20, 1965, Pub. L. 89-272, Title I, § 101(3), 79 Stat. 992, amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 485, amended Dec. 31, 1970, Pub.L. 91-604, § 15(c)(2). 84 Stat. 1713.

§ 1857b. Research, investigations, training, and other activities—Research and development program for prevention and control of air pollution

(a) The Administrator shall establish a national research and development program for the prevention and control of air pollution and as part of such program shall—

(1) conduct, and promote the coordination and acceleration of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, and control of air pollution;

(2) encourage, cooperate with, and render technical services and provide financial assistance to air pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and individuals in the conduct of such activities;

(3) conduct investigations and research and make surveys concerning any specific problem of air pollution in cooperation with any air pollution control agency with a view to recommending a solution of such problem, if he is requested to do so by such agency or if, in his judgment, such problem may affect any community or communities in a State other than that in which the source of the matter causing or contributing to the pollution is located;

(4) establish technical advisory committees composed of recognized experts in various aspects of air pollution to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research.

Availability of information and recommendations; cooperative activities; research grants, etc.; contract; training; fellowships; collection and dissemination of basic data on chemical, physical and biological effects of air quality; process, method and device development

(b) In carrying out the provisions of the preceding subsection the **Administrator is authorized to -**

(1) collect and make available, through publications and other appropriate means, the results of and other information, including appropriate recommendations by him in connection therewith, pertaining to such research and other activities;

(2) cooperate with other Federal departments and agencies, with air pollution control agencies, with other public and private agencies, institutions, and organizations, and with any industries involved, in the preparation and conduct of such research and other activities;

(3) make grants to air pollution control agencies, to other public or nonprofit private agencies, institutions, and organizations, and to individuals, for purposes stated in subsection (a) (1) of this section;

(4) contract with public or private agencies, institutions, and organizations, and with individuals, without regard to section 529 of Title 31 and section 5 of Title 41;

(5) provide training for, and make training grants to, personnel of air pollution control agencies and other persons with suitable qualifications;

(6) establish and maintain research fellowships, in the Environmental Protection Agency and at public or nonprofit private educational institutions or research organizations;

(7) collect and disseminate, in cooperation with other Federal departments and agencies, and with other public or private agencies, institutions, and organizations having related responsibilities, basic data on chemical, physical, and biological effects of varying air quality and other information pertaining to air pollution and the prevention and control thereof; and

(8) develop effective and practical processes, methods, and prototype devices for the prevention or control of air pollution.

* * * * * * * * * *

Results of other scientific studies

(c) In carrying out the provisions of subsection (a) of this section the Administrator shall conduct research on, and survey the results of other scientific studies on, the harmful effects on the health or welfare of persons by the various known air pollutants.

Construction of facilities

(d) The Administrator is authorized to construct such facilities and staff and equip them as he determines to be necessary to carry out his functions under this chapter.

Potential air pollution problems; conferences; findings and recommendations of Administrator

(e) If, in the judgment of the Administrator, an air pollution problem of substantial significance may result from discharge or discharges into the atmosphere, he may call a conference concerning this potential air pollution problem to be held in or near one or more of the places where such discharge or discharges are occurring or will occur. All interested persons shall be given an opportunity to be heard at such conference, either orally or in writing, and shall be permitted to appear in person or by representative in accordance with procedures prescribed by the Administrator. If the Administrator finds, on the basis of the evidence presented at such conference, that the discharge or discharges if permitted to take place or continue are likely to cause or contribute to air pollution subject to abatement under section 1857d of this title, he shall send such findings, together with recommendations concerning the measures which he finds reasonable and suitable to prevent such pollution, to the person or persons whose actions will result in the discharge or discharges involved; to air

pollution agencies of the State or States and of the municipality or municipalities where such discharge or discharges will originate; and to the interstate air pollution control agency, if any, in the jurisdictional area of which any such municipality is located. Such findings and recommendations shall be advisory only, but shall be admitted together with the record of the conference, as part of the proceedings under subsections (b), (c), (d), (e), and (f) of section 1857d of this title.

Accelerated research program on short- and long-term effects of air pollutants; conduct of studies, utilization of facilities, and consultations; duration of contracts; authorization of appropriations

(f)(1) In carrying out research pursuant to this chapter, the Administrator shall give special emphasis to research on the short- and long-term effects of air pollutants on public health and welfare. In the furtherance of such research, he shall conduct an accelerated research program—

(A) to improve knowledge of the contribution of air pollutants to the occurrence of adverse effects on health, including, but not limited to, behavioral, physiological, toxicological, and biochemical effects; and

(B) to improve knowledge of the short- and long-term effects of air pollutants on welfare.

(2) In carrying out the provisions of this subsection the Administrator may—

(A) conduct epidemiological studies of the effects of air pollutants on mortality and morbidity;

(B) conduct clinical and laboratory studies on the immunologic, biochemical, physiological, and the toxicological effects including carcinogenic, teratogenic, and mutagenic effects of air pollutants;

(C) utilize, on a reimbursable basis, the facilities of existing Federal scientific laboratories and research centers;

(D) utilize the authority contained in paragraphs (1) through (4) of subsection (b) of this section; and

(E) consult with other appropriate Federal agencies to assure that research or studies conducted pursuant to this subsection will be coordinated with research and studies of such other Federal agencies.

(3) In entering into contracts under this subsection, the Adminis-

trator is authorized to contract for a term not to exceed 10 years in duration. For the purposes of this paragraph, there are authorized to be appropriated $15,000,000. Such amounts as are appropriated shall remain available until expended and shall be in addition to any other appropriations under this chapter.
As amended Dec. 31, 1970, Pub.L. 91-604, §§ 2(a), 4(2), 15(a) (2), (c) (2), 84 Stat. 1676, 1689, 1710, 1713.

§ 1857b—1. Research relating to fuels and vehicles—Research programs; grants; contracts; pilot and demonstration plants; byproducts research

(a) The Administrator shall give special emphasis to research and development into new and improved methods, having industry-wide application, for the prevention and control of air pollution resulting from the combustion of fuels. In furtherance of such research and development he shall—

(1) conduct and accelerate research programs directed toward development of improved, low-cost techniques for—

(A) control of combustion byproducts of fuels,

(B) removal of potential air pollutants from fuels prior to combustion,

(C) control of emissions from the evaporation of fuels,

(D) improving the efficiency of fuels combustion so as to decrease atmospheric emissions, and

(E) producing synthetic or new fuels which, when used, result in decreased atmospheric emissions.

(2) provide for Federal grants to public or nonprofit agencies, institutions, and organizations and to individuals, and contracts with public or private agencies, institutions, or persons, for payment of (A) part of the cost of acquiring, constructing, or otherwise securing for research and development purposes, new or improved devices or methods having industrywide application of pre-

venting or controlling discharges into the air of various types of pollutants; (B) part of the cost of programs to develop low emission alternatives to the present internal combustion engine; (C) the cost to purchase vehicles and vehicle engines, or portions thereof, for research, development, and testing purposes; and (D) carrying out the other provisions of this section, without regard to section

529 of Title 31 and section 5 of Title 41: *Provided*, That research or demonstration contracts awarded pursuant to this subsection (including contracts for construction) may be made in accordance with, and subject to the limitations provided with respect to research contracts of the military departments in, section 2353 of Title 10, except that the determination, approval, and certification required thereby shall be made by the Secretary: *Provided further*, That no grant may be made under this paragraph in excess of $1,500,000;

* * * * * * * * * *

(3) determine, by laboratory and pilot plant testing, the results of air pollution research and studies in order to develop new or improved processes and plant designs to the point where they can be demonstrated on a large and practical scale;

(4) construct, operate, and maintain, or assist in meeting the cost of the construction, operation, and maintenance of new or improved demonstration plants or processes which have promise of accomplishing the purposes of this chapter;

(5) study new or improved methods for the recovery and marketing of commercially valuable byproducts resulting from the removal of pollutants.

Powers of Secretary in establishing research and development programs

(b) In carrying out the provisions of this section, the **Administrator** may—

(1) conduct and accelerate research and development of low-cost instrumentation techniques to facilitate determination of quantity and quality of air pollutant emissions, including, but not limited to, automotive emissions;

(2) utilize, on a reimbursable basis, the facilities of existing Federal scientific laboratories;

(3) establish and operate necessary facilities and test sites at which to carry on the research, testing, development, and programing necessary to effectuate the purposes of this section;

(4) acquire secret processes, technical data, inventions, patent applications, patents, licenses, and an interest in lands, plants, and facilities, and other property or rights by purchase, license, lease, or donation; and

(5) cause on-site inspections to be made of promising domestic and foreign projects, and cooperate and participate in their development in instances in which the purposes of the chapter will be served thereby.

Authorization of appropriations

(c) For the purposes of this section there are authorized to be appropriated $75,000,000 for the fiscal year ending June 30, 1971, $125,000,000 for the fiscal year ending June 30, 1972, $150,000,000 for the fiscal year ending June 30, 1973, and $150,000,000 for the fiscal year ending June 30, 1974. Amounts appropriated pursuant to this subsection shall remain available until expended.
As amended Apr. 9, 1973, Pub.L. 93–15 § 1(a), 87 Stat. 11.

§ 1857c. Grants for support of air pollution planning and control programs—Amounts; limitations; assurances of plan development capability

(a) (1) (A) The Administrator may make grants to air pollution control agencies in an amount up to two-thirds of the cost of planning, developing, establishing, or improving, and up to one-half of the cost of maintaining, programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards.

(B) Subject to subparagraph (C), the Administrator may make grants to air pollution control agencies within the meaning of paragraph (1), (2), or (4) of section 1857h(b) of this title in an amount up to three-fourths of the cost of planning, developing, establishing, or improving, and up to three-fifths of the cost of maintaining, any program for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards in an area that includes two or more municipalities, whether in the same or different States.

(C) With respect to any air quality control region or portion thereof for which there is an applicable implementation plan under section 1857c—5 of this title grants under subparagraph (B) may be made

only to air pollution control agencies which have substantial responsibilities for carrying out such applicable implementation plan.

(2) Before approving any grant under this subsection to any air pollution control agency within the meaning of sections 1857h (b) (2) and 1857h(b) (4) of this title, the Administrator shall receive assurances that such agency provides for adequate representation of appropriate State, interstate, local, and (when appropriate) international, interests in the air quality control region.

(3) Before approving any planning grant under this subsection to any air pollution control agency within the meaning of sections 1857h(b) (2) and 1857h(b) (4) of this title, the Administrator shall receive assurances that such agency has the capability of developing a comprehensive air quality plan for the air quality control region, which plan shall include (when appropriate) a recommended system of alerts to avert and reduce the risk of situations in which there may be imminent and serious danger to the public health or welfare from air pollutants and the various aspects relevant to the establishment of air quality standards for such air quality control region, including the concentration of industries, other commercial establishments, population and naturally occurring factors which shall affect such standards.

Terms and conditions; regulations; factors for consideration; expenditure and consultation requirements

(b) From the sums available for the purposes of subsection (a) of this section for any fiscal year, the Administrator shall from time to time make grants to air pollution control agencies upon such terms and conditions as the Administrator may find necessary to carry out the purpose of this section. In establishing regulations for the granting of such funds the Administrator shall, so far as practicable, give due consideration to (1) the population, (2) the extent of the actual or potential air pollution problem, and (3) the financial need of the respective agencies. No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than nonrecurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year; and no agency shall receive any grant under this section with respect to the maintenance of a program for the prevention and control of air pollution unless the Administrator is satisfied that such grant will be so used as to supplement and, to the extent practicable, increase the level of State, local, or other non-Federal funds that would

in the absence of such grant be made available for the maintenance of such program, and will in no event supplant such State, local, or other non-Federal funds. No grant shall be made under this section until the Administrator has consulted with the appropriate official as designated by the Governor or Governors of the State or States affected.

State expenditure limitation

(c) Not more than 10 per centum of the total of funds appropriated or allocated for the purposes of subsection (a) of this section shall be granted for air pollution control programs in any one State. In the case of a grant for a program in an area crossing State boundaries, the Administrator shall determine the portion of such grant that is chargeable to the percentage limitation under this subsection for each State into which such area extends.

Reduction of payments; availability of reduced amounts; reduced amount as deemed paid to agency for purpose of determining amount of grant

(d) The Administrator, with the concurrence of any recipient of a grant under this section, may reduce the payments to such recipient by the amount of the pay, allowances, traveling expenses, and any other costs in connection with the detail of any officer or employee to the recipient under section 1857g of this title, when such detail is for the convenience of, and at the request of, such recipient and for the purpose of carrying out the provisions of this chapter. The amount by which such payments have been reduced shall be available for payment of such costs by the Administrator, but shall, for the purpose of determining the amount of any grant to a recipient under subsection (a) of this section, be deemed to have been paid to such agency.
As amended Dec. 31, 1970, Pub.L. 91–604, §§ 3(a), (b) (1), 15(c) (2), 84 Stat. 1677, 1713.

§ 1857c—1. Interstate air quality agencies; program cost limitations

For the purpose of developing implementation plans for any interstate air quality control region designated pursuant to section 1857c—2 of this title, the Administrator is authorized to pay, for two years, up to 100 per centum of the air quality planning program costs of any agency designated by the Governors of the affected States, which agency shall be capable of recommending to the Governors plans for implementation of national primary and secondary ambient air quality standards and shall include representation from the States and appropriate political subdivisions within the air quality control region. After the initial

two-year period the Administrator is authorized to make grants to such agency in an amount up to three-fourths of the air quality planning program costs of such agency.
As amended Dec. 31, 1970, Pub.L. 91-604, § 3(c), 84 Stat. 1677.

§ 1857c—2. Air quality control regions—Responsibility of State for air quality; submission of implementation plan

(a) Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State.

Designated regions

(b) For purposes of developing and carrying out implementation plans under section 1857c—5 of this title—

(1) an air quality control region designated under this section before December 31, 1970, or a region designated after such date under subsection (c) of this section, shall be an air quality control region; and

(2) the portion of such State which is not part of any such designated region shall be an air quality control region, but such portion may be subdivided by the State into two or more air quality control regions with the approval of the Administrator.

Authority of Administrator to designate regions; notification of Governors of affected States

(c) The Administrator shall, within 90 days after December 31, 1970, after consultation with appropriate State and local authorities, designate as an air quality control region any interstate area or major intrastate area which he deems necessary or appropriate for the attainment and maintenance of ambient air quality standards. The Administrator shall immediately notify the Governors of the affected States of any designation made under this subsection.
July 14, 1955, c. 360, Title I, § 107, as added Dec. 31, 1970, Pub.L. 91-604, § 4(a), 84 Stat. 1678.

§ 1857c—3. Air quality criteria and control techniques—Air pollutant list; publication and revision by Administrator; issuance of air quality criteria for air pollutants

Clean Air Act

(a) (1) For the purpose of establishing national primary and secondary ambient air quality standards, the Administrator shall within 30 days after December 31, 1970, publish, and shall from time to time thereafter revise, a list which includes each air pollutant—

(A) which in his judgment has an adverse effect on public health or welfare;

(B) the presence of which in the ambient air results from numerous or diverse mobile or stationary sources; and

(C) for which air quality criteria had not been issued before December 31, 1970, but for which he plans to issue air quality criteria under this section.

(2) The Administrator shall issue air quality criteria for an air pollutant within 12 months after he has included such pollutant in a list under paragraph (1). Air quality criteria for an air pollutant shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities. The criteria for an air pollutant, to the extent practicable, shall include information on—

(A) those variable factors (including atmospheric conditions) which of themselves or in combination with other factors may alter the effects on public health or welfare of such air pollutant;

(B) the types of air pollutants which, when present in the atmosphere, may interact with such pollutant to produce an adverse effect on public health or welfare; and

(C) any known or anticipated adverse effects on welfare.

Issuance by Administrator of information on air pollution control techniques; standing consulting committees for air pollutants; establishment; membership

(b) (1) Simultaneously with the issuance of criteria under subsection (a) of this section, the Administrator shall, after consultation with appropriate advisory committees and Federal departments and agencies, issue to the States and appropriate air pollution control agencies information on air pollution control techniques, which information shall include data relating to the technology and costs of emission control. Such information shall include such data as are available on available technology and alternative methods of prevention and control of air pollution. Such information shall also include data on alternative fuels, processes, and operating methods which will result in elimination or significant reduction of emissions.

(2) In order to assist in the development of information on pollution control techniques, the Administrator may establish a standing consulting committee for each air pollutant included in a list published pursuant to subsection (a) (1) of this section, which shall be comprised of technically qualified individuals representative of State and local governments, industry, and the academic community. Each such committee shall submit, as appropriate, to the Administrator information related to that required by paragraph (1).

Review, modification, and reissuance by Administrator

(c) The Administrator shall from time to time review, and, as appropriate, modify, and reissue any criteria or information on control techniques issued pursuant to this section.

Publication in Federal Register; availability of copies for general public

(d) The issuance of air quality criteria and information on air pollution control techniques shall be announced in the Federal Register and copies shall be made available to the general public.
July 14, 1955, c. 360, Title I, § 108, as added Dec. 31, 1970, Pub.L. 91–604, § 4(a), 84 Stat. 1678.

§ 1857c—4. National primary and secondary ambient air quality standards; promulgation; procedure

(a) (1) The Administrator—

(A) within 30 days after December 31, 1970, shall publish proposed regulations prescribing a national primary ambient air quality standard and a national secondary ambient air quality standard for each air pollutant for which air quality criteria have been issued prior to such date; and

(B) after a reasonable time for interested persons to submit written comments thereon (but no later than 90 days after the initial publication of such proposed standards) shall by regulation promulgate such proposed national primary and secondary ambient air quality standards with such modifications as he deems appropriate.

(2) With respect to any air pollutant for which air quality criteria are issued after December 31, 1970, the Administrator shall publish, simultaneously with the issuance of such criteria and information, pro-

posed national primary and secondary ambient air quality standards for any such pollutant. The procedure provided for in paragraph (1) (B) of this subsection shall apply to the promulgation of such standards.

(b) (1) National primary ambient air quality standards, prescribed under subsection (a) of this section shall be ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health. Such primary standards may be revised in the same manner as promulgated

(2) Any national secondary ambient air quality standard prescribed under subsection (a) of this section shall specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. Such secondary standards may be revised in the same manner as promulgated.

July 14, 1955, c. 360, Title I, § 109, as added Dec. 31, 1970, Pub.L. 91-604, § 4(a), 84 Stat. 1679.

§ 1857c—5. State implementation plans for national primary and secondary ambient air quality standards—Submission to Administrator; time for submission; State procedures; required contents of plans for approval by Administrator; approval of revised plan by Administrator

(a) (1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within nine months after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 1857c—4 of this title for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within nine months after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless

a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the

first sentence of this paragraph.

(2) The Administrator shall, within four months after the date required for submission of a plan under paragraph (1), approve or disapprove such plan or each portion thereof. The Administrator shall approve such plan, or any portion thereof, if he determines that it was adopted after reasonable notice and hearing and that—

(A) (i) in the case of a plan implementing a national primary ambient air quality standard, it provides for the attainment of such primary standard as expeditiously as practicable but (subject to subsection (e) of this section) in no case later than three years from the date of approval of such plan (or any revision thereof to take account of a revised primary standard); and (ii) in the case of a plan implementing a national secondary ambient air quality standard, it specifies a reasonable time at which such secondary standard will be attained;

(B) it includes emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance of such primary or secondary standard, including, but not limited to, land-use and transportation controls;

(C) it includes provision for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality and, (ii) upon request, make such data available to the Administrator;

(D) it includes a procedure, meeting the requirements of paragraph (4), for review (prior to construction or modification) of the location of new sources to which a standard of performance will apply;

(E) it contains adequate provisions for intergovernmental cooperation, including measures necessary to insure that emissions of air pollutants from sources located in any air quality control region will not interfere with the attainment or maintenance of such primary or secondary standard in any portion of such region outside of such State or in any other air quality control region;

(F) it provides (i) necessary assurances that the State will have adequate personnel, funding, and authority to carry out such implementation plan, (ii) requirements for installation of equipment by owners or operators of stationary sources to monitor emissions from such sources, (iii) for periodic reports on the nature and

amounts of such emissions; (iv) that such reports shall be correlated by the State agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection; and (v) for authority comparable to that in section 1857h—1 of this title, and adequate contingency plans to implement such authority;

(G) it provides, to the extent necessary and practicable, for periodic inspection and testing of motor vehicles to enforce compliance with applicable emission standards; and

(H) it provides for revision, after public hearings, of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of achieving such primary or secondary standard; or (ii) whenever the Administrator finds on the basis of information available to him that the plan is substantially inadequate to achieve the national ambient air quality primary or secondary standard which it implements.

(3) The Administrator shall approve any revision of an implementation plan applicable to an air quality control region if he determines that it meets the requirements of paragraph (2) and has been adopted by the State after reasonable notice and public hearings.

(4) The procedure referred to in paragraph (2) (D) for review, prior to construction or modification, of the location of new sources shall (A) provide for adequate authority to prevent the construction or modification of any new source to which a standard of performance under section 1857c—6 of this title will apply at any location which the State determines will prevent the attainment or maintenance within any air quality control region (or portion thereof) within such State of a national ambient air quality primary or secondary standard, and (B) require that prior to commencing construction or modification of any such source, the owner or operator thereof shall submit to such State such information as may be necessary to permit the State to make a determination under clause (A).

Extension of period for submission of plan implementing national secondary ambient air quality standard

(b) The Administrator may, wherever he determines necessary, extend the period for submission of any plan or portion thereof which implements

a national secondary ambient air quality standard for a period not to exceed 18 months from the date otherwise required for submission of such plan.

Preconditions for preparation and publication by Administrator of proposed regulations setting forth an implementation plan; hearings for proposed regulations; promulgation of regulations by Administrator

(c) The Administrator shall, after consideration of any State hearing record, promptly prepare and publish proposed regulations setting forth an implementation plan, or portion thereof, for a State if—

(1) the State fails to submit an implementation plan for any national ambient air quality primary or secondary standard within the time prescribed,

(2) the plan, or any portion thereof, submitted for such State is determined by the Administrator not to be in accordance with the requirements of this section, or

(3) the State fails, within 60 days after notification by the Administrator or such longer period as he may prescribe, to revise an implementation plan as required pursuant to a provision of its plan referred to in subsection (a) (2) (H) of this section.

If such State held no public hearing associated with respect to such plan (or revision thereof), the Administrator shall provide opportunity for such hearing within such State on any proposed regulation. The Administrator shall, within six months after the date required for submission of such plan (or revision thereof), promulgate any such regulations unless, prior to such promulgation, such State has adopted and submitted a plan (or revision) which the Administrator determines to be in accordance with the requirements of this section.

Applicable implementation plan

(d) For purposes of this chapter, an applicable implementation plan is the implementation plan, or most recent revision thereof, which has been approved under subsection (a) of this section or promulgated under subsection (c) of this section and which implements a national primary or secondary ambient air quality standard in a State.

Extension of time period for attainment of national primary ambient air quality standard in implementation plan; procedure; approval of extension by Administrator

(e) (1) Upon application of a Governor of a State at the time of submission of any plan implementing a national ambient air quality primary standard, the Administrator may (subject to paragraph (2))

extend the three-year period referred to in subsection (a) (2) (A) (i) of this section for not more than two years for an air quality control region if after review of such plan the Administrator determines that—

(A) one or more emission sources (or classes of moving sources) are unable to comply with the requirements of such plan which implement such primary standard because the necessary technology or other alternatives are not available or will not be available soon enough to permit compliance within such three-year period, and

(B) the State has considered and applied as a part of its plan reasonably available alternative means of attaining such primary standard and has justifiably concluded that attainment of such primary standard within the three years cannot be achieved.

(2) The Administrator may grant an extension under paragraph (1) only if he determines that the State plan provides for—

(A) application of the requirements of the plan which implement such primary standard to all emission sources in such region other than the sources (or classes) described in paragraph (1) (A) within the three-year period, and

(B) such interim measures of control of the sources (or classes) described in paragraph (1) (A) as the Administrator determines to be reasonable under the circumstances.

Postponement of compliance by any stationary source or class of moving sources with any requirement of an applicable implementation plan; application by Governor of affected State; determination by Administrator; notice and opportunity for hearing; judicial review; precedence of cases; subpenas

(f) (1) Prior to the date on which any stationary source or class of moving sources is required to comply with any requirement of an applicable implementation plan the Governor of the State to which such plan applies may apply to the Administrator to postpone the applicability of such requirement to such source (or class) for not more than one year. If the Administrator determines that—

(A) good faith efforts have been made to comply with such requirement before such date,

(B) such source (or class) is unable to comply with such requirement because the necessary technology or other alternative methods of control are not available or have not been available for a sufficient period of time,

(C) any available alternative operating procedures and interim control measures have reduced or will reduce the impact of such source on public health, and

(D) the continued operation of such source is essential to national security or to the public health or welfare,

then the Administrator shall grant a postponement of such requirement.

(2) (A) Any determination under paragraph (1) shall (i) be made on the record after notice to interested persons and opportunity for hearing, (ii) be based upon a fair evaluation of the entire record at such hearing, and (iii) include a statement setting forth in detail the findings and conclusions upon which the determination is based.

(B) Any determination made pursuant to this paragraph shall be subject to judicial review by the United States court of appeals for the circuit which includes such State upon the filing in such court within 30 days from the date of such decision of a petition by any interested person praying that the decision be modified or set aside in whole or in part. A copy of the petition shall forthwith be sent by registered or certified mail to the Administrator and thereupon the Administrator shall certify and file in such court the record upon which the final decision complained of was issued, as provided in section 2112 of Title 28. Upon the filing of such petition the court shall have jurisdiction to affirm or set aside the determination complained of in whole or in part. The findings of the Administrator with respect to questions of fact (including each determination made under subparagraphs (A), (B), (C), and (D) of

(B) to enforce the provisions of such plan in cases where the State fails to enforce them as he would have under sections 1857c—8 and 1857c—9 of this title with respect to an implementation plan.

Prohibited acts

(e) After the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

July 14, 1955, c. 360, Title I, § 111, as added Dec. 31, 1970, Pub.L. 91–604, § 4(a), 84 Stat. 1683, and amended Nov. 18, 1971, Pub.L. 92–157, Title III, § 302(f), 85 Stat. 464.

§ 1857c—7. National emission standards for hazardous air pollutants —Definitions

(a) For purposes of this section—

(1) The term "hazardous air pollutant" means an air pollutant

to which no ambient air quality standard is applicable and which in the judgment of the Administrator may cause, or contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

(2) The term "new source" means a stationary source the construction or modification of which is commenced after the Administrator proposes regulations under this section establishing an emission standard which will be applicable to such source.

(3) The term "stationary source", "modification", "owner or operator" and "existing source" shall have the same meaning as such terms have under section 1857c—6(a) of this title.

Publication and revision by Administrator of list of hazardous air pollutants; inclusion of air pollutant in list; proposal of regulations by Administrator establishing standards for pollutant; establishment of standards; standards effective upon promulgation; issuance of information on pollution control techniques

(b) (1) (A) The Administrator shall, within 90 days after December 31, 1970, publish (and shall from time to time thereafter revise) a list which includes each hazardous air pollutant for which he intends to establish an emission standard under this section.

(B) Within 180 days after the inclusion of any air pollutant in such list, the Administrator shall publish proposed regulations establishing emission standards for such pollutant together with a notice of a public hearing within thirty days. Not later than 180 days after such publication, the Administrator shall prescribe an emission standard for such pollutant, unless he finds, on the basis of information presented at such hearings, that such pollutant clearly is not a hazardous air pollutant. The Administrator shall establish any such standard at the level which in his judgment provides an ample margin of safety to protect the public health from such hazardous air pollutant.

(C) Any emission standard established pursuant to this section shall become effective upon promulgation.

(2) The Administrator shall, from time to time, issue information on pollution control techniques for air pollutants subject to the provisions of this section.

Prohibited acts; exemption by President for any stationary source; duration and extension of exemption; report to Congress

(c) (1) After the effective date of any emission standard under this section—

(A) no person may construct any new source or modify any existing source which, in the Administrator's judgment, will emit an air pollutant to which such standard applies unless the Administrator finds that such source if properly operated will not cause emissions in violation of such standard, and

(B) no air pollutant to which such standard applies may be emitted from any stationary source in violation of such standard, except that in the case of an existing source—

(i) such standard shall not apply until 90 days after its effective date, and

(ii) the Administrator may grant a waiver permitting such source a period of up to two years after the effective date of a standard to comply with the standard, if he finds that such period is necessary for the installation of controls and that steps will be taken during the period of the waiver to assure that the health of persons will be protected from imminent endangerment.

(2) The President may exempt any stationary source from compliance with paragraph (1) for a period of not more than two years if he finds that the technology to implement such standards is not available and the operation of such source is required for reasons of national security. An exemption under this paragraph may be extended for one or more additional periods, each period not to exceed two years. The President shall make a report to Congress with respect to each exemption (or extension thereof) made under this paragraph.

Implementation and enforcement by State of standards for stationary sources; procedure; delegation of authority of Administrator to State; enforcement power of Administrator unaffected

(d) (1) Each State may develop and submit to the Administrator a procedure for implementing and enforcing emission standards for hazardous air pollutants for stationary sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this chapter to implement and enforce such standards (except with respect to stationary sources owned or operated by the United States).

(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable emission standard under this section.

July 14, 1955, c. 360, Title I, § 112, as added Dec. 31, 1970, Pub.L. 91–604, § 4(a), 84 Stat. 1685.

§ 1857c—8. Federal enforcement procedures—Determination of violation of applicable implementation plan or standard; notification of

violator; issuance of compliance order or initiation of civil action upon failure to correct; effect of compliance order; contents of compliance order

(a) (1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any requirement of an applicable implementation plan, the Administrator shall notify the person in violation of the plan and the State in which the plan applies of such finding. If such violation extends beyond the 30th day after the date of the Administrator's notification, the Administrator may issue an order requiring such person to comply with the requirements of such plan or he may bring a civil action in accordance with subsection (b) of this section.

(2) Whenever, on the basis of information available to him, the Administrator finds that violations of an applicable implementation plan are so widespread that such violations appear to result from a failure of the State in which the plan applies to enforce the plan effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the 30th day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan (hereafter referred to in this section as "period of federally assumed enforcement"), the Administrator may enforce any requirement of such plan with respect to any person—

(A) by issuing an order to comply with such requirement, or

(B) by bringing a civil action under subsection (b) of this section.

(3) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of section 1857c—6 (e) of this title (relating to new source performance standards) or section 1857c—7(c) of this title (relating to standards for hazardous emissions), or is in violation of any requirement of section 1857c—9 of this title (relating to inspections, etc.), he may issue an order requiring such person to comply with such section or requirement, or he may bring a civil action in accordance with subsection (b) of this section.

(4) An order issued under this subsection (other than an order relating to a violation of section 1857c—7 of this title) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs.

Any order issued under this subsection shall state with reasonable specificity the nature of the violation, specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to appropriate corporate officers.

Civil action for appropriate relief; jurisdiction; venue; notice to appropriate State agency

(b) The Administrator may commence a civil action for appropriate relief, including a permanent or temporary injunction, whenever any person—

(1) violates or fails or refuses to comply with any order issued under subsection (a) of this section; or

(2) violates any requirements of an applicable implementation plan (A) during any period of Federally assumed enforcement, or (B) more than 30 days after having been notified by the Administrator under subsection (a) (1) of this section of a finding that such person is violating such requirement; or

(3) violates section 1857c—6(e) or section 1857c—7(c) of this title; or

(4) fails or refuses to comply with any requirement of section 1857c—9 of this title.

Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency.

Penalties

(c) (1) Any person who knowingly—

(A) violates any requirement of an applicable implementation plan (i) during any period of Federally assumed enforcement, or (ii) more than 30 days after having been notified by the Administrator under subsection (a) (1) of this section that such person is violating such requirement, or

(B) violates or fails or refuses to comply with any order issued

by the Administrator under subsection (a) of this section, or

(C) violates section 1857c—6(e) or section 1857c—7(c) of this title.

shall be punished by a fine of not more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after the first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter; shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both. July 14, 1955, c. 360, Title I, § 113, as added Dec. 31, 1970, Pub.L. 91–604, § 4(a), 84 Stat. 1686, and amended Nov. 18, 1971, Pub.L. 92–157, Title III, § 302(b), (c), 85 Stat. 464.

§ 1857c—9. Recordkeeping, inspections, monitoring, and entry—Authority of Administrator or authorized representative

(a) For the purpose (i) of developing or assisting in the development of any implementation plan under section 1857c—5 or section 1857c—6 (d) of this title, any standard of performance under section 1857c—6 of this title, or any emission standard under section 1857c—7 of this title, (ii) of determining whether any person is in violation of any such standard or any requirement of such a plan, or (iii) carrying out section 1857h—1 of this title—

(1) the Administrator may require the owner or operator of any emission source to (A) establish and maintain such records, (B) make such reports, (C) install, use, and maintain such monitoring equipment or methods, (D) sample such emissions (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (E) provide such other information as he may reasonably require; and

(2) the Administrator or his authorized representative, upon presentation of his credentials—

(A) shall have a right of entry to, upon, or through any premises in which an emission source is located or in which any records required to be maintained under paragraph (1) of this section are located, and

(B) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under paragraph (1), and sample any emissions which the owner or operator of such source is required to sample under paragraph (1).

Enforcement procedure by State; delegation of authority of Administrator to State; power of Administrator unaffected

(b) (1) Each State may develop and submit to the Administrator a procedure for carrying out this section in such State. If the Administrator finds the State procedure is adequate, he may delegate to such State any authority he has to carry out this section (except with respect to new sources owned or operated by the United States).

(2) Nothing in this subsection shall prohibit the Administrator from carrying out this section in a State.

Availability of records, reports, and information to public; disclosure of trade secrets

(c) Any records, reports or information obtained under subsection (a) of this section shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof, (other than emission data) to which the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of Title 18, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter or when revelant in any proceeding under this chapter.

July 14, 1955, c. 360, Title I, § 114, as added Dec. 31, 1970, Pub.L. 91-604, § 4(a), 84 Stat. 1687.

§ 1857d. Abatement of air pollution by means of conference procedure —Air pollution subject to abatement

(a) The pollution of the air in any State or States which endangers the health or welfare of any persons and which is covered by subsection

(b) or (c) of this section, shall be subject to abatement as provided in this section.

Conferences of air pollution agencies

(b) (1) Whenever requested by the Governor of any State, a State air pollution control agency, or (with the concurrence of the Governor and the State air pollution control agency for the State in which the municipality is situated) the governing body of any municipality, the Administrator shall, if such request refers to air pollution which is alleged to endanger the health or welfare of persons in a State other than that in which the discharge or discharges (causing or contributing to such pollution) originate, give formal notification thereof to the air pollution control agency of the municipality where such discharge or discharges originate, to the air pollution control agency of the State in which such municipality is located, and to the interstate air pollution control agency, if any, in whose jurisdictional area such municipality is located, and shall call promptly a conference of such agency or agencies and of the air pollution control agencies of the municipalities which may be adversely affected by such pollution, and the air pollution control agency, if any, of each State, or for each area, in which any such municipality is located.

(2) Whenever requested by the Governor of any State, a State air pollution control agency, or (with the concurrence of the Governor and the State air pollution control agency for the State in which the municipality is situated) the governing body of any municipality, the Administrator shall, if such request refers to alleged air pollution which is endangering the health or welfare of persons only in the State in which the discharge or discharges (causing or contributing to such pollution) originate and if a municipality affected by such air pollution, or the municipality in which such pollution originates, has either made or concurred in such request, give formal notification thereof to the State air pollution control agency, to the air pollution control agencies of the municipality where such discharge or discharges originate, and of the municipality or municipalities alleged to be adversely affected thereby, and to any interstate air pollution control agency, whose jurisdictional area includes any such municipality and shall promptly call a conference of such agency or agencies, unless in the judgment of the Administrator, the effect of such pollution is not of such significance as to warrant exercise of Federal jurisdiction under this section.

(3) The Administrator may, after consultation with State officials of all affected States, also call such a conference whenever, on the basis

of reports, surveys, or studies, he has reason to believe that any pollution referred to in subsection (a) of this section is occurring and is endangering the health and welfare of persons in a State other than that in which the discharge or discharges originate. The Administrator shall invite the cooperation of any municipal, State, or interstate air pollution control agencies having jurisdiction in the affected area on any surveys or studies forming the basis of conference action.

(4) A conference may not be called under this subsection with respect to an air pollutant for which (at the time the conference is called) a national primary or secondary ambient air quality standard is in effect under section 1857c—4 of this title.

Participation of foreign countries in conferences

(c) Whenever the Administrator, upon receipt of reports, surveys, or studies from any duly constituted international agency, has reason to believe that any pollution referred to in subsection (a) of this section which endangers the health or welfare or persons in a foreign country is occurring, or whenever the Secretary of State requests him to do so with respect to such poilution which the Secretary of State alleges is of such a nature, the Administrator shall give formal notification thereof to the air pollution control agency of the municipality where such discharge or discharges originate, to the air pollution control agency of the State in which such municipality is located, and to the interstate air pollution control agency, if any, in the jurisdictional area of which such municipality is located, and shall call promptly a conference of such agency or agencies. The Administrator shall invite the foreign country which may be adversely affected by the pollution to attend and participate in the conference, and the representative of such country shall, for the purpose of the conference and any further proceeding resulting from such conference, have all the rights of a State air pollution control agency. This subsection shall apply only to a foreign country which the Administrator determines has given the United States essentially the same rights with respect to the prevention or control of air pollution occurring in that country as is given that country by this subsection.

Attendence at conference; Federal report of matters before conference; notification of date of conference; presentation of views; transcript of proceedings; summary

(d)(1) The agencies called to attend any conference under this section may bring such persons as they desire to the conference. The Administrator shall deliver to such agencies and make available to other interested parties, at least thirty days prior to any such conference, a Federal

report with respect to the matters before the conference, including data and conclusions or findings (if any); and shall give at least thirty days' prior notice of the conference date to any such agency, and to the public by publication on at least three different days in a newspaper or newspapers of general circulation in the area. The chairman of the conference shall give interested parties an opportunity to present their views to the conference with respect to such Federal report, conclusions or findings (if any), and other pertinent information. The Administrator shall provide that a transcript be maintained of the proceedings of the conference and that a copy of such transcript be made available on request of any participant in the conference at the expense of such participant.

(2) Following this conference, the Administrator shall prepare and foward to all air pollution control agencies attending the conference a summary of conference discussions including (A) occurrence of air pollution subject to abatement under this subchapter; (B) adequacy of measures taken toward abatement of the pollution; and (C) nature of delays, if any, being encountered in abating the pollution.

Recommendations of Administrator for remedial action by agencies; commencement of recommended action

(e) If the Administrator believes, upon the conclusion of the conference or thereafter, that effective progress toward abatement of such pollution is not being made and that the health or welfare of any persons is being endangered, he shall recommend to the appropriate State, interstate, or municipal air pollution control agency (or to all such agencies) that the necessary remedial action be taken. The Administrator shall allow at least six months from the date he makes such recommendations for the taking of such recommended action.

Hearings for failure to abate pollution; board members; findings and recommendations

(f) (1) If, at the conclusion of the period so allowed, such remedial action or other action which in the judgment of the Administrator is reasonably calculated to secure abatement of such pollution has not been taken, the Administrator shall call a public hearing, to be held in or near one or more of the places where the discharge or discharges causing or contributing to such pollution originated, before a hearing board of five or more persons appointed by the Administrator. Each State in which any discharge causing or contributing to such pollution originates and each State claiming to be adversely affected by such pollution shall be given an opportunity to select one member of such hearing board

and each Federal department, agency, or instrumentality having a substantial interest in the subject matter as determined by the Administrator shall be given an opportunity to select one member of such hearing board, and one member shall be a representative of the appropriate interstate air pollution agency if one exists, and not less than a majority of such hearing board shall be persons other than officers or employees of the Environmental Protection Agency. At least three weeks' prior notice of such hearing shall be given to the State, interstate, and municipal air pollution control agencies called to attend such hearing and to the alleged polluter or polluters. All interested parties shall be given a reasonable opportunity to present evidence to such hearing board.

(2) On the basis of evidence presented at such hearing, the hearing board shall make findings as to whether pollution referred to in subsection (a) of this section is occurring and whether effective progress toward abatement thereof is being made. If the hearing board finds such pollution is occurring and effective progress toward abatement thereof is not being made it shall make recommendations to the Administrator concerning the measures, if any, which it finds to be reasonable and suitable to secure abatement of such pollution.

(3) The Administrator shall send such findings and recommendations to the person or persons discharging any matter causing or contributing to such pollution; to air pollution control agencies of the State or States and of the municipality or municipalities where such discharge or discharges originate; and to any interstate air pollution control agency whose jurisdictional area includes any such municipality, together with a notice specifying a reasonable time (not less than six months) to secure abatement of such pollution.

Judicial proceedings to secure abatement of pollution

(g) If action reasonably calculated to secure abatement of the pollution within the time specified in the notice following the public hearing is not taken, the Administrator—

(1) in the case of pollution of air which is endangering the health or welfare of persons (A) in a State other than that in which the discharge or discharges (causing or contributing to such pollution) originate, or (B) in a foreign country which has participated in a conference called under subsection (c) of this section and in all proceedings under this section resulting from such conference, may request the Attorney General to bring a suit on behalf of the United States in the appropriate United States district court to secure abatement of the pollution.

* * *

(2) in the case of pollution of air which is endangering the health or welfare of persons only in the State in which the discharge or discharges (causing or contributing to such pollution) originate, at the request of the Governor of such State, shall provide such technical and other assistance as in his judgment is necessary to assist the State in judicial proceedings to secure abatement of the pollution under State or local law or, at the request of the Governor of such State, shall request the Attorney General to bring suit on behalf of the United States in the appropriate United States district court to secure abatement of the pollution.

Federal court proceedings; evidence; jurisdiction of court

(h) The court shall receive in evidence in any suit brought in a United States court under subsection (g) of this section a transcript of the proceedings before the board and a copy of the board's recommendations and shall receive such further evidence as the court in its discretion deems proper. The court, giving due consideration to the practicability of complying with such standards as may be applicable and to the physical and economic feasibility of securing abatement of any pollution proved, shall have jurisdiction to enter such judgment, and orders enforcing such judgment, as the public interest and the equities of the case may require.

Compensation and travel expenses for members of hearing board

(i) Members of any hearing board appointed pursuant to subsection (f) of this section who are not regular full-time officers or employees of the United States shall, while participating in the hearing conducted by such board or otherwise engaged on the work of such board, be entitled to receive compensation at a rate fixed by the Administrator, but not exceeding $100 per diem, including travel-time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (section 5703 of Title 5) for persons in the Government service employed intermittently.

Clean Air Act

Furnishing of data to Administrator by polluter; reports; failure to make required report; forfeitures

(j) (1) In connection with any conference called under this section, the Administrator is authorized to require any person whose activities result in the emission of air pollutants causing or contributing to air pollution to file with him, in such form as he may prescribe, a report, based on existing data, furnishing to the Administrator such information as may reasonably be required as to the character, kind, and quantity of pollutants discharged and the use of devices or other means to prevent or reduce the emission of pollutants by the person filing such a report. After a conference has been held with respect to any such pollution the Administrator shall require such reports from the person whose activities result in such pollution only to the extent recommended by such conference. Such report shall be made under oath or otherwise, as the Administrator may prescribe, and shall be filed with the Administrator within such reasonable period as the Administrator may prescribe, unless additional time be granted by the Administrator. No person shall be required in such report to divulge trade secrets or secret processes and all information reported shall be considered confidential for the purposes of section 1905 of Title 18.

(2) If any person required to file any report under this subsection shall fail to do so within the time fixed by the Administrator for filing the same, and such failure shall continue for thirty days after notice of such default, such person shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where such person has his principal office or in any district in which he does business: *Provided*, That the Administrator may upon application therefor remit or mitigate any forfeiture provided for under this subsection and he shall have authority to determine the facts upon all such applications.

Compliance with any requirement of an applicable implementation plan or prescribed standard

(k) No order or judgment under this section, or settlement, compromise, or agreement respecting any action under this section (whether or not entered or made before December 31, 1970) shall relieve any person of any obligation to comply with any requirement of an applicable implementation plan, or with any standard prescribed under section 1857c—6 or section 1857c—7 of this title.

July 14, 1955, c. 360, Title I, § 115, formerly § 5, as added Dec. 17, 1963, Pub.L. 88-206, § 1, 77 Stat. 396, renumbered § 105, and amended Oct. 20, 1965, Pub.L. 89-272, Title I, §§ 101(2), (3), 102, 79 Stat. 992, 995, renumbered § 108, and amended Nov. 21, 1967, Pub.L. 90-148, § 2, 81 Stat. 491, renumbered § 115, and amended Dec. 31, 1970, Pub.L. 91-604, §§ 4(a), (b) (2)-(10), 15(c) (2), 84 Stat. 1678, 1688, 1689, 1713.

§ 1857d—1. Retention of State authority

Except as otherwise provided in sections 1857f—6a, 1857f—6c(c)(4), and 1857f—11 of this title (preempting certain State regulation of moving sources) nothing in this chapter shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan or under section 1857c—6 or section 1857c—7 of this title, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section.

July 14, 1955, c. 360, Title I, § 116, formerly § 109 as added Nov. 21, 1967, Pub.L. 90-148, § 2, 81 Stat. 497, renumbered and amended Dec. 31, 1970, Pub.L. 91-604, § 4(a), (c), 84 Stat. 1678, 1689.

§ 1857e. Air Quality Advisory Board; advisory committees—Establishment of Board; membership; appointment; term

(a) (1) There is hereby established in the Environmental Protection Agency an Air Quality Advisory Board, composed of the Administrator or his designee, who shall be Chairman, and fifteen members appointed by the President, none of whom shall be Federal officers or employees. The appointed members, having due regard for the purposes of this chapter, shall be selected from among representatives of various State, interstate, and local governmental agencies, of public or private interests contributing to, affected by, or concerned with air pollution, and of other public and private agencies, organizations, or groups demonstrating an active interest in the field of air pollution prevention and control, as well as other individuals who are expert in this field.

* * * * * * * * * *

(2) Each member appointed by the President shall hold office for a term of three years, except that (A) any member appointed to fill a vacancy occurring prior to the expiration of the term for

which his predecessor was appointed shall be appointed for the remainder of such term, and (B) the terms of office of the members first taking office pursuant to this subsection shall expire as follows: five at the end of one year after the date of appointment, five at the end of two years after such date, and five at the end of three years after such date, as designated by the President at the time of appointment, and (C) the term of any member under the preceding provisions shall be extended until the date on which his successor's appointment is effective. None of the members shall

Duties of Board

(B) The Board shall advise and consult with the Administrator on matters of policy relating to the activities and functions of the Administrator under this chapter and make such recommendations as it deems necessary to the President

Clerical and technical assistance

(C) Such clerical and technical assistance as may be necessary to discharge the duties of the Board and such other advisory committees as hereinafter authorized shall be provided from the personnel of the Environmental Protection Agency

Advisory committees

(d) In order to obtain assistance in the development and implementation of the purposes of this chapter including air quality criteria, recommended control techniques, standards, research and development, and to encourage the continued efforts on the part of industry to improve air quality and to develop economically feasible methods for the control and abatement of air pollution, the Administrator shall from time to time establish advisory committees. Committee members shall include, but not be limited to, persons who are knowledgeable concerning air quality from the standpoint of health, welfare, economics, or technology.

Compensation; travel expenses

(e) The members of the Board and other advisory committees appointed pursuant to this chapter who are not officers or employees of the United States while attending conferences or meetings of the Board or while otherwise serving at the request of the Administrator, shall be entitled to receive compensation at a rate to be fixed by the Administrator, but not exceeding $100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel

expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5 for persons in the Government service employed intermittently.

Consultations by Administrator

(f) Prior to—

(1) issuing criteria for an air pollutant under section 1857c—3 (a) (2) of this title,

(2) publishing any list under section 1857c—6(b) (1) (A) or section 1857c—7(b) (1) (A) of this title,

(3) publishing any standard under section 1857c—6(b) (1) (B) or section 1857c—7(b) (1) (B) of this title, or

(4) publishing any regulation under section 1857f—1(a) of this title,

the Administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, independent experts, and Federal departments and agencies.

July 14, 1955, c. 360, Title I, § 117, formerly § 6, as added Dec. 17, 1963, Pub.L. 88-206, § 1, 77 Stat. 399, renumbered § 106, Oct. 20, 1965, Pub.L. 89-272, Title I, § 101(3), 79 Stat. 992, renumbered § 110, and amended Nov. 21, 1967, Pub.L. 90-148, § 2, 81 Stat. 498, renumbered § 117, and amended Dec. 31, 1970, Pub.L. 91-604, §§ 4(a), (d), 14(c) (2), 84 Stat. 1678, 1689, 1713.

§ 1857f. Control and abatement of air pollution from Federal facilities; compliance of Federal departments, etc., with Federal, State, interstate, and local requirements; exemption by President of any emission source from any executive branch department, etc.; report to Congress

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge of air pollutants, shall comply with Federal, State, interstate, and local requirements respecting control and abatement of air pollution to the same extent that any person is subject to such requirements. The President may exempt any emission source of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so, except that no exemption may be granted from section 1857c—6 of this title and an exemption from section 1857c—7 of this title may be granted only in accordance with section 1857c—7(c) of this title. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budg-

etary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption. July 14, 1955, c. 360, Title I, § 118, formerly § 7, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 399, renumbered § 107, Oct. 20, 1965, Pub.L. 89–272, Title I, § 101(3), 79 Stat. 992, renumbered § 111, and amended Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 499, renumbered § 118, and amended Dec. 31, 1970, Pub.L. 91–604, §§ 4(a), 5, 84 Stat. 1678, 1689.

SUBCHAPTER II.—EMISSION STANDARDS FOR MOVING SOURCES

§ 1857f—1. Establishment of standards—Air pollutant emissions

(a) Except as otherwise provided in subsection (b) of this section—

(1) The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment causes or contributes to, or is likely to cause or to contribute to, air pollution which endangers the public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d) of this section), whether such vehicles and engines are designed as complete systems or incorporated devices to prevent or control such pollution.

(2) Any regulation prescribed under this subsection (and any revision thereof) shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

Model year 1975, reduction requirement; model year 1976, reduction requirement; promulgation; report to Congress; suspension of standards; interim standards

(b) (1) (A) The regulations under subsection (a) of this section applicable to emissions of carbon monoxide and hydrocarbons from light duty vehicles and engines manufactured during or after model year 1975 shall contain standards which require a reduction of at least 90 per

centum from emissions of carbon monoxide and hydrocarbons allowable under the standards under this section applicable to light duty vehicles and engines manufactured in model year 1970.

(B) The regulations under subsection (a) of this section applicable to emissions of oxides of nitrogen from light duty vehicles and engines manufactured during or after model year 1976 shall contain standards which require a reduction of at least 90 per centum from the average of emissions of oxides of nitrogen actually measured from light duty vehicles manufactured during model year 1971 which are not subject to any Federal or State emission standard for oxides of nitrogen. Such average of emissions shall be determined by the Administrator on the basis of measurements made by him.

(2) Emission standards under paragraph (1), and measurement techniques on which such standards are based (if not promulgated prior to December 31, 1970), shall be prescribed by regulation within 180 days after such date.

(3) For purposes of this part—

(A) (i) The term "model year" with reference to any specific calendar year means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year. If the manufacturer has no annual production period, the term "model year" shall mean the calendar year.

(ii) For the purpose of assuring that vehicles and engines manufactured before the beginning of a model year were not manufactured for purposes of circumventing the effective date of a standard required to be prescribed by subsection (b) of this section, the Administrator may prescribe regulations defining "model year" otherwise than as provided in clause (i).

(B) The term "light duty vehicles and engines" means new light duty motor vehicles and new light duty motor vehicle engines, as determined under regulations of the Administrator.

(4) On July 1 of 1971, and of each year thereafter, the Administrator shall report to the Congress with respect to the development of systems necessary to implement the emission standards established pursuant to this section. Such reports shall include information regarding the continuing effects of such air pollutants subject to standards under this section on the public health and welfare, the extent and progress of efforts being made to develop the necessary systems, the costs associated with development and application of such systems, and following such hearings as he may deem advisable, any recommendations for additional congressional action necessary, to achieve the purposes of this chapter. In gathering information for the purposes of this paragraph

and in connection with any hearing, the provisions of section 1857h—5(a) of this title (relating to subpenas) shall apply.

(5) (A) At any time after January 1, 1972, any manufacturer may file with the Administrator an application requesting the suspension for one year only of the effective date of any emission standard required by paragraph (1) (A) with respect to such manufacturer. The Administrator shall make his determination with respect to any such application within 60 days. If he determines, in accordance with the provisions of this subsection, that such suspension should be granted, he shall simultaneously with such determination prescribe by regulation interim emission standards which shall apply (in lieu of the standards required to be prescribed by paragraph (1) (A)) to emissions of carbon monoxide or hydrocarbons (or both) from such vehicles and engines manufactured during model year 1975.

(B) At any time after January 1, 1973, any manufacturer may file with the Administrator an application requesting the suspension for one year only of the effective date of any emission standard required by paragraph (1) (B) with respect to such manufacturer. The Administrator shall make his determination with respect to any such application within 60 days. If he determines, in accordance with the provisions of this subsection, that such suspension should be granted, he shall simultaneously with such determination prescribe by regulation interim emission standards which shall apply (in lieu of the standards required to be prescribed by paragraph (1) (B)) to emissions of oxides of nitrogen from such vehicles and engines manufactured during model year 1976.

(C) Any interim standards prescribed under this paragraph shall reflect the greatest degree of emission control which is achievable by application of technology which the Administrator determines is available, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers.

(D) Within 60 days after receipt of the application for any such suspension, and after public hearing, the Administrator shall issue a decision granting or refusing such suspension. The Administrator shall grant such suspension only if he determines that (i) such suspension is essential to the public interest or the public health and welfare of the United States, (ii) all good faith efforts have been made to meet the standards established by this subsection, (iii) the applicant has established that effective control technology, processes, operating methods, or other alternatives are not available or have not been available for a sufficient period of time to achieve compliance prior to the effective date of such standards, and (iv) the study and investigation of the

National Academy of Sciences conducted pursuant to subsection (c) of this section and other information available to him has not indicated that technology, processes, or other alternatives are available to meet such standards.

(E) Nothing in this paragraph shall extend the effective date of any emission standard required to be prescribed under this subsection for more than one year.

Feasibility study and investigation by National Academy of Sciences; reports to Administrator and Congress; availability of information

(c) (1) The Administrator shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a comprehensive study and investigation of the technological feasibility of meeting the emissions standards required to be prescribed by the Administrator by subsection (b) of this section.

(2) Of the funds authorized to be appropriated to the Administrator by this chapter, such amounts as are required shall be available to carry out the study and investigation authorized by paragraph (1) of this subsection.

(3) In entering into any arrangement with the National Academy of Sciences for conducting the study and investigation authorized by paragraph (1) of this subsection, the Administrator shall request the National Academy of Sciences to submit semiannual reports on the progress of its study and investigation to the Administrator and the Congress, beginning not later than July 1, 1971, and continuing until such study and investigation is completed.

(4) The Administrator shall furnish to such Academy at its request any information which the Academy deems necessary for the purpose of conducting the investigation and study authorized by paragraph (1) of this subsection. For the purpose of furnishing such information, the Administrator may use any authority he has under this chapter (A) to obtain information from any person, and (B) to require such person to conduct such tests, keep such records, and make such reports respecting research or other activities conducted by such person as may be reasonably necessary to carry out this subsection.

Useful life of vehicles

(d) The Administrator shall prescribe regulations under which the useful life of vehicles and engines shall be determined for purposes of subsection (a) (1) of this section and section 1857f—5a of this title. Such regulations shall provide that useful life shall—

(1) in the case of light duty vehicles and light duty vehicle engines, be a period of use of five years or of fifty thousand miles (or the equivalent), whichever first occurs; and

(2) in the case of any other motor vehicle or motor vehicle engine, be a period of use set forth in paragraph (1) unless the Administrator determines that a period of use of greater duration or mileage is appropriate.

New power sources or propulsion systems

(e) In the event a new power source or propulsion system for new motor vehicles or new motor vehicle engines is submitted for certification pursuant to section 1857f—5(a) of this title, the Administrator may postpone certification until he has prescribed standards for any air pollutants emitted by such vehicle or engine which cause or contribute to, or are likely to cause or contribute to, air pollution which endangers the public health or welfare but for which standards have not been prescribed under subsection (a) of this section.

As amended Dec. 31, 1970, Pub.L. 91–604, § 6(a), 84 Stat. 1690.

§ 1857f—2. Prohibited acts—Manufacture, sale, or importation of vehicles or engines not in conformity with regulations; failure to make reports or provide information; removal of devices installed in conformity with regulations; prohibited sale or lease of vehicles or engines

(a) The following acts and the causing thereof are prohibited—

(1) in the case of a manufacturer of new motor vehicles or new motor vehicle engines for distribution in commerce, the sale, or the offering for sale, or the introduction, or delivery for introduction, into commerce, or (in the case of any person, except as provided by regulation of the Administrator), the importation into the United States, of any new motor vehicle or new motor vehicle engine, manufactured after the effective date of regulations under this part which are applicable to such vehicle or engine unless such vehicle or engine is covered by a certificate of conformity issued (and in effect) under regulations prescribed under this part (except as provided in subsection (b) of this section);

(2) for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information, required under section 1857f—6 of this title;

(3) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this part prior to its sale and delivery to the ultimate purchaser, or for any manu-

facturer or dealer knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or

(4) for any manufacturer of a new motor vehicle or new motor vehicle engine subject to standards prescribed under section 1857f—1 of this title—

(A) to sell or lease any such vehicle or engine unless such manufacturer has complied with the requirements of section 1857f—5a(a) and (b) of this title with respect to such vehicle or engine, and unless a label or tag is affixed to such vehicle or engine in accordance with section 1857f—5a(c) (3) of this title, or

(B) to fail or refuse to comply with the requirements of section 1857f—5a(c) or (e) of this title.

Authority of Administrator to make exemptions; refusal to admit vehicle or engine into United States; vehicles or engines intended for export

(b) (1) The Administrator may exempt any new motor vehicle or new motor vehicle engine from subsection (a) of this section upon such terms and conditions as he may find necessary for the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security.

(2) A new motor vehicle or new motor vehicle engine offered for importation or imported by any person in violation of subsection (a) of this section shall be refused admission into the United States, but the Secretary of the Treasury and the Administrator, may, by joint regulation, provide for deferring final determination as to admission and authorizing the delivery of such a motor vehicle or engine offered for import to the owner or consignee thereof upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that any such motor vehicle or engine will be brought into conformity with the standards, requirements, and limitations applicable to it under this part. The Secretary of the Treasury shall, if a motor vehicle or engine is finally refused admission under this paragraph, cause disposition thereof in accordance with the customs laws unless it is exported, under regulations prescribed by such Secretary, within ninety days of the date of notice of such refusal or such additional time as may be permitted pursuant to such regulations, except that disposition in accordance with the customs laws may not be made in such manner as may result, directly or indirectly, in the sale, to the ultimate consumer, of a new motor vehicle or new motor vehicle engine that

fails to comply with applicable standards of the Administrator under this part.

(3) A new motor vehicle or new motor vehicle engine intended solely for export, and so labeled or tagged on the outside of the container and on the vehicle or engine itself, shall be subject to the provisions of subsection (a) of this section, except that if the country of export has emission standards which differ from the standards prescribed under subsection (a) of this section, then such vehicle or engine shall comply with the standards of such country of export.

Exemptions; annual report of exemptions to Congress

(c) Upon application therefor, the Administrator may exempt from subsection (a) (3) of this section any vehicles (or class thereof) manufactured before the 1974 model year from subsection (a) (3) of this section [1] for the purpose of permitting modifications to the emission control device or system of such vehicle in order to use fuels other than those specified in certification testing under section 1857f—5(a) (1) of this title, if the Administrator, on the basis of information submitted by the applicant, finds that such modification will not result in such vehicle or engine not complying with standards under section 1857f—1 of this title applicable to such vehicle or engine. Any such exemption shall identify (1) the vehicle or vehicles so exempted, (2) the specific nature of the modification, and (3) the person or class of persons to whom the exemption shall apply.

As amended Dec. 31, 1970, Pub.L. 91–604, §§ 7(a), 11(a) (2) (A), 15 (c) (2), 84 Stat. 1693, 1705, 1713.

§ 1857f—3. Jurisdiction of district court to restrain violations; actions brought by or in name of United States; territorial scope of subpenas for witnesses

(a) The district courts of the United States shall have jurisdiction to restrain violations of paragraph (1), (2), (3), or (4) of section 1857f—2(a) of this title.

* * * * * * * * * *

As amended Dec. 31, 1970, Pub.L. 91–604, § 7(b), 84 Stat. 1694.

(b) Actions to restrain such violations shall be brought by and in the name of the United States. In any such action, subpenas for witnesses who are required to attend a district court in any district may run into any other district.

July 14, 1955, c. 360, Title II, § 204, as added Oct. 20, 1965, Pub.L.

89-272, Title I, § 101(8), 79 Stat. 994, and amended Nov. 21, 1967, Pub.L. 90-148, § 2, 81 Stat. 500.

Historical Note

1967 Amendment. Pub.L. 90-148 reenacted section without change.

Legislative History. For legislative history and purpose of Pub.L. 89-272, see 1965, U.S.Code Cong. and Adm.News, p. 3609. See, also, Pub.L. 90-148, 1967 U.S. Code Cong. and Adm.News, p. 1938.

§ 1857f—4. Penalties for violations; separate offenses

Any person who violates paragraph (1), (2), (3), or (4) of section 1857f—2(a) of this title shall be subject to a civil penalty of not more than $10,000. Any such violation with respect to paragraph (1), (2), or (4) of section 1857f—2(a) of this title shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine.
As amended Dec. 31, 1970, Pub.L. 91-604, § 7(c), 84 Stat. 1694.

§ 1857f—5. Motor vehicle and motor vehicle engine compliance testing and certification—Testing and issuance of certificate of conformity

(a) (1) The Administrator shall test, or require to be tested in such manner as he deems appropriate, any new motor vehicle or new motor vehicle engine submitted by a manufacturer to determine whether such vehicle or engine conforms with the regulations prescribed under section 1857f—1 of this title. If such vehicle or engine conforms to such regulations, the Administrator shall issue a certificate of conformity upon such terms, and for such period (not in excess of one year), as he may prescribe.

(2) The Administrator shall test any emission control system incorporated in a motor vehicle or motor vehicle engine submitted to him by any person, in order to determine whether such system enables such vehicle or engine to conform to the standards required to be prescribed under section 1857f—1(b) of this title. If the Administrator finds on the basis of such tests that such vehicle or engine conforms to such standards, the Administrator shall issue a verification of compliance with emission standards for such system when incorporated in vehicles of a class of which the tested vehicle is representative. He shall inform manufacturers and the National Academy of Sciences, and make available to the public, the results of such tests. Tests under this paragraph shall be conducted under such terms and conditions (including requirements for preliminary testing by qualified independent laboratories) as the Administrator may prescribe by regulations.

Clean Air Act

Testing procedures; hearing; judicial review; additional evidence

(b) (1) In order to determine whether new motor vehicles or new motor vehicle engines being manufactured by a manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued, the Administrator is authorized to test such vehicles or engines. Such tests may be conducted by the Administrator directly or, in accordance with conditions specified by the Administrator, by the manufacturer.

(2) (A) (i) If, based on tests conducted under paragraph (1) on a sample of new vehicles or engines covered by a certificate of conformity, the Administrator determines that all or part of the vehicles or engines so covered do not conform with the regulations with respect to which the certificate of conformity was issued, he may suspend or revoke such certificate in whole or in part, and shall so notify the manufacturer. Such suspension or revocation shall apply in the case of any new motor vehicles or new motor vehicle engines manufactured after the date of such notification (or manufactured before such date if still in the hands of the manufacturer), and shall apply until such time as the Administrator finds that vehicles and engines manufactured by the manufacturer do conform to such regulations. If, during any period of suspension or revocation, the Administrator finds that a vehicle or engine actually conforms to such regulations, he shall issue a certificate of conformity applicable to such vehicle or engine.

(ii) If, based on tests conducted under paragraph (1) on any new vehicle or engine, the Administrator determines that such vehicle or engine does not conform with such regulations, he may suspend or revoke such certificate insofar as it applies to such vehicle or engine until such time as he finds such vehicle or engine actually so conforms with such regulations, and he shall so notify the manufacturer.

(B) (i) At the request of any manufacturer the Administrator shall grant such manufacturer a hearing as to whether the tests have been properly conducted or any sampling methods have been properly applied, and make a determination on the record with respect to any suspension or revocation under subparagraph (A); but suspension or revocation under subparagraph (A) shall not be stayed by reason of such hearing.

(ii) In any case of actual controversy as to the validity of any determination under clause (i), the manufacturer may at any time prior to the 60th day after such determination is made file a petition with the United States court of appeals for the circuit wherein such manu-

facturer resides or has his principal place of business for a judicial review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator or other officer designated by him for that purpose. The Administrator thereupon shall file in the court the record of the proceedings on which the Administrator based his determination, as provided in section 2112 of Title 28.

(iii) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(iv) Upon the filing of the petition referred to in clause (ii), the court shall have jurisdiction to review the order in accordance with chapter 7 of Title 5 and to grant appropriate relief as provided in such chapter.

Inspection

(c) For purposes of enforcement of this section, officers or employees duly designated by the Administrator, upon presenting appropriate credentials to the manufacturer or person in charge, are authorized (1) to enter, at reasonable times, any plant or other establishment of such manufacturer, for the purpose of conducting tests of vehicles or engines in the hands of the manufacturer, or (2) to inspect at reasonable times, records, files, papers, processes, controls, and facilities used by such manufacturer in conducting tests under regulations of the Administrator. Each such inspection shall be commenced and completed with reasonable promptness.

Rules and regulations

(d) The Administrator shall by regulation establish methods and procedures for making tests under this section.

Publication of test results

(e) The Administrator shall announce in the Federal Register and

make available to the public the results of his tests of any motor vehicle or motor vehicle engine submitted by a manufacturer under subsection (a) of this section as promptly as possible after December 31, 1970, and at the beginning of each model year which begins thereafter. Such results shall be described in such nontechnical manner as will reasonably disclose to prospective ultimate purchasers of new motor vehicles and new motor vehicle engines the comparative performance of the vehicles and engines tested in meeting the standards prescribed under section 1857f—1 of this title.

July 14, 1955, c. 360, Title II, § 206, as added Dec. 31, 1970, Pub.L. 91-604, § 8(a), 84 Stat. 1694.

PART A.—MOTOR VEHICLE EMISSION AND FUEL STANDARDS

§ 1857f—5a. Compliance by vehicles and engines in actual use—Warranty

(a) Effective with respect to vehicles and engines manufactured in model years beginning more than 60 days after December 31, 1970, the manufacturer of each new motor vehicle and new motor vehicle engine shall warrant to the ultimate purchaser and each subsequent purchaser that such vehicle or engine is (1) designed, built, and equipped so as to conform at the time of sale with applicable regulations under section 1857f—1, of this title, and (2) free from defects in materials and workmanship which cause such vehicle or engine to fail to conform with applicable regulations for its useful life (as determined under section 1857f—1(d) of this title).

Testing methods and procedures

(b) If the Administrator determines that (i) there are available testing methods and procedures to ascertain whether, when in actual use throughout its useful life (as determined under section 1857f—1(d) of this title), each vehicle and engine to which regulations under section 1857f—1 of this title apply complies with the emission standards of such regulations, (ii) such methods and procedures are in accordance with good engineering practices, and (iii) such methods and procedures are reasonably capable of being correlated with tests conducted under section 1857f—5(a) (1) of this title, then—

(1) he shall establish such methods and procedures by regulation, and

(2) at such time as he determines that inspection facilities or equipment are available for purposes of carrying out testing methods

and procedures established under paragraph (1), he shall prescribe regulations which shall require manufacturers to warrant the emission control device or system of each new motor vehicle or new motor vehicle engine to which a regulation under section 1857f—1 of this title applies and which is manufactured in a model year beginning after the Administrator first prescribes warranty regulations under this paragraph (2). The warranty under such regulations shall run to the ultimate purchaser and each subsequent purchaser and shall provide that if—

(A) the vehicle or engine is maintained and operated in accordance with instructions under subsection (c) (3) of this section,

(B) it fails to conform at any time during its useful life (as determined under section 1857f—1(d) of this title) to the regulations prescribed under section 1857f—1 of this title, and

(C) such nonconformity results in the ultimate purchaser (or any subsequent purchaser) of such vehicle or engine having to bear any penalty or other sanction (including the denial of the right to use such vehicle or engine) under State or Federal law,

then such manufacturer shall remedy such nonconformity under such warranty with the cost thereof to be borne by the manufacturer.

Nonconforming vehicles; plan for remedying nonconformity; instructions for maintenance and use

(c) Effective with respect to vehicles and engines manufactured during model years beginning more than 60 days after December 31, 1970—

(1) If the Administrator determines that a substantial number of any class or category of vehicles or engines, although properly maintained and used, do not conform to the regulations prescribed under section 1857f—1 of this title, when in actual use throughout their useful life (as determined under section 1857f—1(d) of this title), he shall immediately notify the manufacturer thereof of such nonconformity, and he shall require the manufacturer to submit a plan for remedying the nonconformity of the vehicles or engines with respect to which such notification is given. The plan shall provide that the nonconformity of any such vehicles or engines which are properly used and maintained will be remedied at the expense of the manufacturer. If the manufacturer disagrees

with such determination of nonconformity and so advises the Administrator, the Administrator shall afford the manufacturer and other interested persons an opportunity to present their views and evidence in support thereof at a public hearing. Unless, as a result of such hearing the Administrator withdraws such determination of nonconformity, he shall, within 60 days after the completion of such hearing, order the manufacturer to provide prompt notification of such nonconformity in accordance with paragraph (2).

(2) Any notification required by paragraph (1) with respect to any class or category of vehicles or engines shall be given to dealers, ultimate purchasers, and subsequent purchasers (if known) in such manner and containing such information as the Administrator may by regulations require.

(3) The manufacturer shall furnish with each new motor vehicle or motor vehicle engine such written instructions for the maintenance and use of the vehicle or engine by the ultimate purchaser as may be reasonable and necessary to assure the proper functioning of emission control devices and systems. In addition, the manufacturer shall indicate by means of a label or tag permanently affixed to such vehicle or engine that such vehicle or engine is covered by a certificate of conformity issued for the purpose of assuring achievement of emissions standards prescribed under section 1857f—1 of this title. Such label or tag shall contain such other information relating to control of motor vehicle emissions as the Administrator shall prescribe by regulation.

Dealer costs borne by manufacturer

(d) Any cost obligation of any dealer incurred as a result of any requirement imposed by subsection (a), (b), or (c) of this section shall be borne by the manufacturer. The transfer of any such cost obligation from a manufacturer to any dealer through franchise or other agreement is prohibited.

Cost statement

(e) If a manufacturer includes in any advertisement a statement respecting the cost or value of emission control devices or systems, such manufacturer shall set forth in such statement the cost or value attributed to such devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his representatives, shall have the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 1857j of this title.

Inspection after sale to ultimate purchaser

(f) Any inspection of a motor vehicle or a motor vehicle engine for purposes of subsection (c) (1) of this section, after its sale to the ultimate purchaser, shall be made only if the owner of such vehicle or engine voluntarily permits such inspection to be made, except as may be provided by any State or local inspection program.

July 14, 1955, c. 360, Title II, § 207, as added Dec. 31, 1970, Pub.L. 91–604, § 8(a), 84 Stat. 1696.

§ 1857f—6. Reports, records, and information required; access to and copying records; availability to public; disclosure of trade secrets

(a) Every manufacturer shall establish and maintain such records, make such reports, and provide such information, as the Administrator may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this part and regulations thereunder and shall, upon request of an officer or employee duly designated by the Administrator, permit such officer or employee at reasonable times, to have access to and copy such records.

(b) Any records, reports or information obtained under subsection (a) of this section shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (other than emission data), to which the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of Title 18, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter. Nothing in this section shall authorize the withholding of information by the Administrator or any officer or employee under his control, from the duly authorized committees of the Congress.

July 14, 1955, c. 360, Title II, § 208, formerly § 207, as added Oct. 20, 1965, Pub.L. 89–272, Title I, § 101(8), 79 Stat. 994, amended Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 501, renumbered and amended Dec. 31, 1970, Pub.L. 91–604, §§ 8(a), 10(a), 11(a) (2) (A), 15(c) (2), 84 Stat. 1694, 1700, 1705, 1713.

§ 1857f—6a. State standards

(a) No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from

new motor vehicles or new motor vehicle engines subject to this part No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

(b) The Administrator shall, after notice and opportunity for public hearing, waive application of this section to any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, unless he finds that such State does not require standards more stringent than applicable Federal standards to meet compelling and extraordinary conditions or that such State standards and accompanying enforcement procedures are not consistent with section 1857f—1(a) of this title.

(c) Nothing in this part shall preclude or deny to any State or political subdivision thereof the right otherwise to control, regulate, or restrict the use, operation, or movement of registered or licensed motor vehicles.

July 14, 1955, c. 360, Title II, § 209, formerly § 208, as added Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 501, renumbered and amended Dec. 31, 1970, Pub.L. 91–604, §§ 8(a), 11(a) (2) (A), 15(c) (2), 84 Stat. 1694, 1705, 1713.

§ 1857f—6b. Federal assistance in developing and maintaining vehicle emission devices and systems inspection and emission testing and control programs

The Administrator is authorized to make grants to appropriate State agencies in an amount up to two-thirds of the cost of developing and maintaining effective vehicle emission devices and systems inspection and emission testing and control programs, except that—

(1) no such grant shall be made for any part of any State vehicle inspection program which does not directly relate to the cost of the air pollution control aspects of such a program;

(2) no such grant shall be made unless the Secretary of Transportation has certified to the Administrator that such program is consistent with any highway safety program developed pursuant to section 402 of Title 23; and

(3) no such grant shall be made unless the program includes provisions designed to insure that emission control devices and sys-

tems on vehicles in actual use have not been discontinued or rendered inoperative.

July 14, 1955, c. 360, Title II, § 210, formerly § 209, as added Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 502, renumbered and amended Dec. 31, 1970, Pub.L. 91–604, §§ 8(a), 10(b), 84 Stat. 1694, 1700.

§ 1857f—6c. Regulation of fuels—Authority of Administrator to regulate

(a) The Administrator may by regulation designate any fuel or fuel additive and, after such date or dates as may be prescribed by him, no manufacturer or processor of any such fuel or additive may sell, offer for sale, or introduce into commerce such fuel or additive unless the Administrator has registered such fuel or additive in accordance with subsection (b) of this section.

Registration requirement

(b) (1) For the purpose of registration of fuels and fuel additives, the Administrator shall require—

(A) the manufacturer of any fuel to notify him as to the commercial identifying name and manufacturer of any additive contained in such fuel; the range of concentration of any additive in the fuel; and the purpose-in-use of any such additive; and

(B) the manufacturer of any additive to notify him as to the chemical composition of such additive.

(2) For the purpose of registration of fuels and fuel additives, the Administrator may also require the manufacturer of any fuel or fuel additive—

(A) to conduct tests to determine potential public health effects of such fuel or additive (including, but not limited to, carcinogenic, teratogenic, or mutagenic effects), and

(B) to furnish the description of any analytical technique that can be used to detect and measure any additive in such fuel, the recommended range of concentration of such additive, and the recommended purpose-in-use of such additive, and such other information as is reasonable and necessary to determine the emissions resulting from the use of the fuel or additive contained in such fuel, the effect of such fuel or additive on the emission control performance of any vehicle or vehicle engine, or the extent to which such emissions affect the public health or welfare.

Tests under subparagraph (A) shall be conducted in conformity with test procedures and protocols established by the Administrator. The result

of such tests shall not be considered confidential.

(3) Upon compliance with the provision of this subsection, including assurances that the Administrator will receive changes in the information required, the Administrator shall register such fuel or fuel additive.

Control or prohibition of offending fuels and fuel additives

(c) (1) The Administrator may, from time to time on the basis of information obtained under subsection (b) of this section or other information available to him, by regulation, control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive for use in a motor vehicle or motor vehicle engine (A) if any emission products of such fuel or fuel additive will endanger the public health or welfare, or (B) if emission products of such fuel or fuel additive will impair to a significant degree the performance of any emission control device or system which is in general use, or which the Administrator finds has been developed to a point where in a reasonable time it would be in general use were such regulation to be promulgated.

(2) (A) No fuel, class of fuels, or fuel additive may be controlled or prohibited by the Administrator pursuant to clause (A) of paragraph (1) except after consideration of all relevant medical and scientific evidence available to him, including consideration of other technologically or economically feasible means of achieving emission standards under section 1857f—1 of this title.

(B) No fuel or fuel additive may be controlled or prohibited by the Administrator pursuant to clause (B) of paragraph (1) except after consideration of available scientific and economic data, including a cost benefit analysis comparing emission control devices or systems which are or will be in general use and require the proposed control or prohibition with emission control devices or systems which are or will be in general use and do not require the proposed control or prohibition. On request of a manufacturer of motor vehicles, motor vehicle engines, fuels, or fuel additives submitted within 10 days of notice of proposed rulemaking, the Administrator shall hold a public hearing and publish findings with respect to any matter he is required to consider under this subparagraph. Such findings shall be published at the time of promulgation of final regulations.

(C) No fuel or fuel additive may be prohibited by the Administrator under paragraph (1) unless he finds, and publishes such finding, that in his judgment such prohibition will not cause the use of any other fuel

or fuel additive which will produce emissions which will endanger the public health or welfare to the same or greater degree than the use of the fuel or fuel additive proposed to be prohibited.

(3) (A) For the purpose of obtaining evidence and data to carry out paragraph (2), the Administrator may require the manufacturer of any motor vehicle or motor vehicle engine to furnish any information which has been developed concerning the emissions from motor vehicles resulting from the use of any fuel or fuel additive, or the effect of such use on the performance of any emission control device or system.

(B) In obtaining information under subparagraph (A), section 1857h—5(a) of this title (relating to subpenas) shall be applicable.

(4) (A) Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for purposes of motor vehicle emission control, any control or prohibition respecting use of a fuel or fuel additive in a motor vehicle or motor vehicle engine—

(i) if the Administrator has found that no control or prohibition under paragraph (1) is necessary and has published his finding in the Federal Register, or

(ii) if the Administrator has prescribed under paragraph (1) a control or prohibition applicable to such fuel or fuel additive, unless State prohibition or control is identical to the prohibition or control prescribed by the Administrator.

(B) Any State for which application of section 1857f—6a(a) of this title has at any time been waived under section 1857f—6a(b) of this title may at any time prescribe and enforce, for the purpose of motor vehicle emission control, a control or prohibition respecting any fuel or fuel additive.

(C) A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 1857c—5 of this title so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements.

Penalty

(d) Any person who violates subsection (a) of this section or the regulations prescribed under subsection (c) of this section or who fails

to furnish any information required by the Administrator under subsection (b) of this section shall forfeit and pay to the United States a civil penalty of $10,000 for each and every day of the continuance of such violation, which shall accrue to the United States and be recovered in a civil suit in the name of the United States, brought in the district where such person has his principal office or in any district in which he does business. The Administrator may, upon application therefor, remit or mitigate any forfeiture provided for in this subsection and he shall have authority to determine the facts upon all such applications.
July 14, 1955, c. 360, Title II, § 211, formerly § 210, as added Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 502, renumbered and amended Dec. 31, 1970, Pub.L. 91–604, §§ 8(a), 9(a), 84 Stat. 1694, 1698; Nov. 18, 1971, Pub.L. 92–157, Title III, § 302(d), (e), 85 Stat. 464.

§ 1857f—6e. Low-emission vehicles—Definitions

(a) For the purpose of this section—

(1) The term "Board" means the Low-Emission Vehicle Certification Board.

(2) The term "Federal Government" includes the legislative, executive, and judicial branches of the Government of the United States, and the government of the District of Columbia.

(3) The term "motor vehicle" means any self-propelled vehicle designed for use in the United States on the highways, other than a vehicle designed or used for military field training, combat, or tactical purposes.

(4) The term "low-emission vehicle" means any motor vehicle which—

(A) emits any air pollutant in amounts significantly below new motor vehicle standards applicable under section 1857f—1 of this title at the time of procurement to that type of vehicle; and

(B) with respect to all other air pollutants meets the new motor vehicle standards applicable under section 1857f—1 of this title at the time of procurement to that type of vehicle.

(5) The term "retail price" means (A) the maximum statutory price applicable to any class or model of motor vehicle; or (B) in any case where there is no applicable maximum statutory price, the most recent procurement price paid for any class or model of motor vehicle.

Clean Air Act

Low-Emission Vehicle Certification Board; establishment; composition; appointment; Chairman; compensation; travel expenses; employment and compensation of additional personnel; time and place of meetings; powers

(b) (1) There is established a Low-Emission Vehicle Certification Board to be composed of the Administrator or his designee, the Secretary of Transportation or his designee, the Chairman of the Council on Environmental Quality or his designee, the Director of the National Highway Safety Bureau in the Department of Transportation, the Administrator of General Services, and two members appointed by the President. The President shall designate one member of the Board as Chairman.

(2) Any member of the Board not employed by the United States may receive compensation at the rate of $125 for each day such member is engaged upon work of the Board. Each member of the Board shall be reimbursed for travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of Title 5 for persons in the Government service employed intermittently.

(3) (A) The Chairman, with the concurrence of the members of the Board, may employ and fix the compensation of such additional personnel as may be necessary to carry out the functions of the Board, but no individual so appointed shall receive compensation in excess of the rate authorized for GS–18 by section 5332 of Title 5.

(B) The Chairman may fix the time and place of such meetings as may be required, but a meeting of the Board shall be called whenever a majority of its members so request.

(C) The Board is granted all other powers necessary for meeting its responsibilities under this section.

Determination by Administrator of models or classes of motor vehicles qualifying as low-emission vehicles

(c) The Administrator shall determine which models or classes of motor vehicles qualify as low-emission vehicles in accordance with the provisions of this section.

Certification by Board; specifications for suitable substitutes; criteria for certification; term of certification; procedure for certification

(d) (1) The Board shall certify any class or model of motor vehicles—

(A) for which a certification application has been filed in accordance with paragraph (3) of this subsection;

(B) which is a low-emission vehicle as determined by the Ad-

ministrator; and

(C) which it determines is suitable for use as a substitute for a class or model of vehicles at that time in use by agencies of the Federal Government.

The Board shall specify with particularity the class or model of vehicles for which the class or model of vehicles described in the application is a suitable substitute. In making the determination under this subsection the Board shall consider the following criteria:

(i) the safety of the vehicle;

(ii) its performance characteristics;

(iii) its reliability potential;

(iv) its serviceability;

(v) its fuel availability;

(vi) its noise level; and

(vii) its maintenance costs as compared with the class or model of motor vehicle for which it may be a suitable substitute.

(2) Certification under this section shall be effective for a period of one year from the date of issuance.

(3) (A) Any party seeking to have a class or model of vehicle certified under this section shall file a certification application in accordance with regulations prescribed by the Board.

(B) The Board shall publish a notice of each application received in the Federal Register.

(C) The Administrator and the Board shall make determinations for the purpose of this section in accordance with procedures prescribed by regulation by the Administrator and the Board, respectively.

(D) The Administrator and the Board shall conduct whatever investigation is necessary, including actual inspection of the vehicle at a place designated in regulations prescribed under subparagraph (A).

(E) The Board shall receive and evaluate written comments and documents from interested parties in support of, or in opposition to, certification of the class or model of vehicle under consideration.

(F) Within 90 days after the receipt of a properly filed certification application, the Administrator shall determine whether such class or model of vehicle is a low-emission vehicle, and within 180 days of such determination, the Board shall reach a decision by majority vote as to whether such class or model of vehicle, having been determined to be a low-emission vehicle, is a suitable substitute for any class or classes of vehicles presently being purchased by the Federal Government for use by its agencies.

(G) Immediately upon making any determination or decision under subparagraph (F), the Administrator and the Board shall each publish in the Federal Register notice of such determination or decision, including reasons therefor and in the case of the Board any dissenting views.

Acquisition by Federal government by purchase or lease; procurement costs; contract provisions

(e) (1) Certified low-emission vehicles shall be acquired by purchase or lease by the Federal Government for use by the Federal Government in lieu of other vehicles if the Administrator of General Services determines that such certified vehicles have procurement costs which are no more than 150 per centum of the retail price of the least expensive class or model of motor vehicle for which they are certified substitutes.

(2) In order to encourage development of inherently low-polluting propulsion technology, the Board may, at its discretion, raise the premium set forth in paragraph (1) of this subsection to 200 per centum of the retail price of any class or model of motor vehicle for which a certified low-emission vehicle is a certified substitute, if the Board determines that the certified low-emission vehicle is powered by an inherently low-polluting propulsion system.

(3) Data relied upon by the Board and the Administrator in determining that a vehicle is a certified low-emission vehicle shall be incorporated in any contract for the procurement of such vehicle.

Priority for purchase by procuring agency

(f) The procuring agency shall be required to purchase available certified low-emission vehicles which are eligible for purchase to the extent they are available before purchasing any other vehicles for which any low-emission vehicle is a certified substitute. In making purchasing selections between competing eligible certified low-emission vehicles, the procuring agency shall give priority to (1) any class or model which does not require extensive periodic maintenance to retain its low-polluting qualities or which does not require the use of fuels which are more expensive than those of the classes or models of vehicles for which it is a certified substitute; and (2) passenger vehicles other than buses.

Waiver of statutory price limitations

(g) For the purpose of procuring certified low-emission vehicles any statutory price limitations shall be waived.

Testing of emissions from certified low-emission vehicles purchased by the Federal government; procedure; recertification

(h) The Administrator shall, from time to time as the Board deems appropriate, test the emissions from certified low-emission vehicles purchased by the Federal Government. If at any time he finds that the emission rates exceed the rates on which certification under this section was based, the Administrator shall notify the Board. Thereupon the Board shall give the supplier of such vehicles written notice of this finding, issue public notice of it, and give the supplier an opportunity to make necessary repairs, adjustments, or replacements. If no such repairs, adjustments, or replacements are made within a period to be set by the Board, the Board may order the supplier to show cause why the vehicle involved should be eligible for recertification.

Authorization of appropriations

(i) There are authorized to be appropriated for paying additional amounts for motor vehicles pursuant to, and for carrying out the provisions of, this section, $5,000,000 for the fiscal year ending June 30, 1971, and $25,000,000 for each of the three succeeding fiscal years.

Promulgation by Board of implementing procedures

(j) The Board shall promulgate the procedures required to implement this section within one hundred and eighty days after December 31, 1970.

July 14, 1955, c. 360, Title II, § 212, as added Dec. 31, 1970, Pub.L. 91-604, § 10(c), 84 Stat. 1700. As amended Apr. 9, 1973, Pub.L. 93-15, § 1(b), 87 Stat. 11.

§ 1857f—7. Definitions

As used in this part—

(1) The term "manufacturer" as used in sections 1857f—1, 1857f—2, 1857f—5, 1857f—6, and 1857f—6a of this title means any person engaged in the manufacturing or assembling of new motor vehicles or new motor vehicle engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles or new motor vehicle engines, but shall not include any dealer with respect to new motor vehicles or new motor vehicle engines received by him in commerce.

(2) The term "motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway.

(3) Except with respect to vehicles or engines imported or offered for importation, the term "new motor vehicle" means a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser; and the term "new motor vehicle engine" means an engine in a new motor vehicle or a motor vehicle engine the equitable or legal title to which has never been transferred to the ultimate purchaser; and with respect to imported vehicles or engines, such terms mean a motor vehicle and engine, respectively, manufactured after the effective date of a regulation issued under section 1857f—1 of this title which is applicable to such vehicle or engine (or which would be applicable to such vehicle or engine had it been manufactured for importation into the United States).

(4) The term "dealer" means any person who is engaged in the sale or the distribution of new motor vehicles or new motor vehicle engines to the ultimate purchaser.

(5) The term "ultimate purchaser" means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases such new motor vehicle or new engine for purposes other than resale.

(6) The term "commerce" means (A) commerce between any place in any State and any place outside thereof; and (B) commerce wholly within the District of Columbia.

* * * * * * * * * *

July 14, 1955, c. 360, Title II, § 213, formerly § 208, as added Oct. 20, 1965, Pub.L. 89–272, Title I, § 101(8), 79 Stat. 994, renumbered § 212 and amended Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 503, renumbered § 213 and amended Dec. 31, 1970, Pub.L. 91–604, §§ 8(a), 10(d), 11(a) (2) (A), 84 Stat. 1694, 1703, 1705.

§ 1857f—8. Repealed. Pub.L. 89–675, § 2(b), Oct. 15, 1966, 80 Stat. 954

PART B.—AIRCRAFT EMISSION STANDARDS

§ 1857f—9. Establishment of standards—Study; report; hearings; issuance of regulations

Clean Air Act

(a) (1) Within 90 days after December 31, 1970, the Administrator shall commence a study and investigation of emissions of air pollutants from aircraft in order to determine—

(A) the extent to which such emissions affect air quality in air quality control regions throughout the United States, and

(B) the technological feasibility of controlling such emissions.

(2) Within 180 days after commencing such study and investigation, the Administrator shall publish a report of such study and investigation and shall issue proposed emission standards applicable to emissions of any air pollutant from any class or classes of aircraft or aircraft engines which in his judgment cause or contribute to or are likely to cause or contribute to air pollution which endangers the public health or welfare.

(3) The Administrator shall hold public hearings with respect to such proposed standards. Such hearings shall, to the extent practicable, be held in air quality control regions which are most seriously affected by aircraft emissions. Within 90 days after the issuance of such proposed regulations, he shall issue such regulations with such modifications as he deems appropriate. Such regulations may be revised from time to time.

Effective date of regulations

(b) Any regulation prescribed under this section (and any revision thereof) shall take effect after such period as the Administrator finds necessary (after consultation with the Secretary of Transportation) to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

Consultation with Secretary of Transportation

(c) Any regulations under this section, or amendments thereto, with respect to aircraft, shall be prescribed only after consultation with the Secretary of Transportation in order to assure appropriate consideration for aircraft safety.

July 14, 1955, c. 360, Title II, § 231, as added Dec. 31, 1970, Pub.L. 91-604, § 11(a) (1), 84 Stat. 1703.

§ 1857f—10. Enforcement of standards; regulations by Secretary of Transportation; proceedings to amend, modify, suspend, or revoke certificates

(a) The Secretary of Transportation, after consultation with the Administrator, shall prescribe regulations to insure compliance with all standards prescribed under section 1857f—9 of this title by the Administrator. The regulations of the Secretary of Transportation shall include

provisions making such standards applicable in the issuance, amendment, modification, suspension, or revocation of any certificate authorized by the Federal Aviation Act or the Department of Transportation Act. Such Secretary shall insure that all necessary inspections are accomplished, and, may execute any power or duty vested in him by any other provision of law in the execution of all powers and duties vested in him under this section.

(b) In any action to amend, modify, suspend, or revoke a certificate in which violation of an emission standard prescribed under section 1857f—9 of this title or of a regulation prescribed under subsection (a) of this section is at issue, the certificate holder shall have the same notice and appeal rights as are prescribed for such holders in the Federal Aviation Act of 1958 or the Department of Transportation Act, except that in any appeal to the National Transportation Safety Board, the Board may amend, modify, or revoke the order of the Secretary of Transportation only if it finds no violation of such standard or regulation and that such amendment, modification, or revocation is consistent with safety in air transportation.

July 14, 1955, c. 360, Title II, § 232, as added Dec. 31, 1970, Pub.L. 91–604, § 11(a) (1), 84 Stat. 1704.

§ 1857f—11. State standards and controls

No State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any air pollutant from any aircraft or engine thereof unless such standard is identical to a standard applicable to such aircraft under this part.

July 14, 1955, c. 360, Title II, § 233, as added Dec. 31, 1970, Pub.L. 91–604, § 11(a) (1), 84 Stat. 1704.

Legislative History. For legislative history and purpose of Pub.L. 91–604, see 1970 U.S.Code Cong. and Adm.News, p. 5356.

§ 1857f—12. Definitions

Terms used in this part (other than Administrator) shall have the same meaning as such terms have under section 1301 of Title 49.

July 14, 1955, c. 360, Title II, § 234, as added Dec. 31, 1970, Pub.L. 91–604, § 11(a) (1), 84 Stat. 1705.

Legislative History. For legislative history and purpose of Pub.L. 91–604, see 1970 U.S.Code Cong. and Adm.News, p. 5356.

SUBCHAPTER III.—GENERAL PROVISIONS

§ 1857g. Administration—Regulations; delegation of powers of Administrator

(a) The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter. The Administrator may delegate to any officer or employee of the Environmental Protection Agency such of his powers and duties under this chapter, except the making of regulations, as he may deem necessary or expedient.

Detail of Environmental Protection Agency personnel to air pollution control agencies

(b) Upon the request of an air pollution control agency, personnel of the Environmental Protection Agency may be detailed to such agency for the purpose of carrying out the provisions of this chapter.

Payments under grants; installments; advances or reimbursement

(c) Payments under grants made under this chapter may be made in installments, and in advance or by way of reimbursement, as may be determined by the Administrator.

As amended Dec. 31, 1970, Pub.L. 91–604, §§ 3(b) (2), 15(c) (2), 84 Stat. 1677, 1713.

§ 1857h. Definitions

When used in this chapter—

(a) The term "Administrator" means the Administrator of the Environmental Protection Agency.

* * * * * * * * * *

(g) The term "air pollutant" means an air pollution agent or combination of such agents.

(h) All language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.

As amended Dec. 31, 1970, Pub.L. 91–604, § 15(a) (1), (c) (1), 84 Stat. 1710, 1713.

§ 1857h—1. Emergency powers

Notwithstanding any other provision of this chapter, the Administrator, upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to the health of persons, and that appropriate State or local authorities have not acted to abate such sources, may bring suit on behalf of the United States in the appropriate United States district court to immediately restrain any person causing or contributing to the

alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary.

July 14, 1955, c. 360, Title III, § 303, as added Dec. 31, 1970, Pub.L. 91-604, § 12(a), 84 Stat. 1705.

permitted by the Eleventh Amendment to the Constitution) who is alleged to be in violation of (A) an emission standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an emission standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be.

Notice

(b) No action may be commenced—

(1) under subsection (a) (1) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Administrator, (ii) to the State in which the violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any person may intervene as a matter of right.

(2) under subsection (a) (2) of this section prior to 60 days after the plaintiff has given notice of such action to the Administrator,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of section 1857c—7(c) (1) (E) of this title or an order issued by the Administrator pursuant to section 1857c—8(a) of this title. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

Venue; intervention by Administrator.

(c) (1) Any action respecting a violation by a stationary source of an emission standard or limitation or an order respecting such standard or limitation may be brought only in the judicial district in which such source is located.

(2) In such action under this section, the Administrator, if not a party, may intervene as a matter of right.

Award of costs; security

(d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

Non-restriction of other rights

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any emission standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

Definition

(f) For purposes of this section, the term "emission standard or limitation under this chapter" means—

(1) a schedule or timetable of compliance, emission limitation, standard of performance or emission standard, or

(2) a control or prohibition respecting a motor vehicle fuel or fuel additive,

which is in effect under this chapter (including a requirement applicable by reason of section 1857f of this title) or under an applicable implementation plan.

July 14, 1955, c. 360, Title III, § 304, as added Dec. 31, 1970, Pub.L. 91–604, § 12(a), 84 Stat. 1706.

§ 1857h—3. Legal representation of Administrator and appearance by Attorney General

The Administrator shall request the Attorney General to appear and represent him in any civil action instituted under this chapter to which the Administrator is a party. Unless the Attorney General notifies the Administrator that he will appear in such action within a reasonable

time, attorneys appointed by the Administrator shall appear and represent him.

July 14, 1955, c. 360, Title III, § 305, as added Dec. 31, 1970, Pub.L. 91–604, § 12(a), 84 Stat. 1707.

§ 1857h—4. Federal procurement—Contracts with violators prohibited

(a) No Federal agency may enter into any contract with any person who is convicted of any offense under section 1857c—8(c) (1) of this title for the procurement of goods, materials, and services to perform such contract at any facility at which the violation which gave rise to such conviction occurred if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such a conviction has been corrected.

Notification procedures

(b) The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a) of this section.

Federal agency contracts

(c) In order to implement the purposes and policy of this chapter to protect and enhance the quality of the Nation's air, the President shall, not more than 180 days after December 31, 1970, cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this chapter in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

Exemptions; notification to Congress

(d) The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

Annual report to Congress

(e) The President shall annually report to the Congress on measures taken toward implementing the purpose and intent of this section, including but not limited to the progress and problems associated with implementation of this section.

July 14, 1955, c. 360, Title III, § 306, as added Dec. 31, 1970, Pub.L. 91–604, § 12(a), 84 Stat. 1707.

Clean Air Act

§ 1857h—5. Administrative proceedings and judicial review

(a) (1) [1] In connection with any determination under section 1857c—5 (f) of this title or section 1857f—1(b) (5) of this title, or for purposes of obtaining information under section 1857f—1(b) (4) or 1857f—6c (c) (3) of this title, the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Except for emission data, upon a showing satisfactory to the Administrator by such owner or operator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes of such owner or operator, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of Title 18, except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, to persons carrying out the National Academy of Sciences' study and investigation provided for in section 1857f—1(c) of this title, or when relevant in any proceeding under this chapter. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this subparagraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) (1) A petition for review of action of the Administrator in promulgating any national primary or secondary ambient air quality standard, any emission standard under section 1857c—7 of this title, any standard of performance under section 1857c—6 of this title, any standard under section 1857f—1 of this title (other than a standard required to be prescribed under section 1857f—1(b) (1) of this title), any determination under section 1857f—1(b) (5) of this title, any control or prohibition under section 1857f—6c of this title, or any standard under section 1857f—9 of this title may be filed only in the United States Court of Appeals for the District of Columbia. A petition for review of

the Administrator's action in approving or promulgating any implementation plan under section 1857c—5 of this title or section 1857c—6(d) of this title may be filed only in the United States Court of Appeals for the appropriate circuit. Any such petition shall be filed within 30 days from the date of such promulgation or approval, or after such date if such petition is based solely on grounds arising after such 30th day.

(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in civil or criminal proceedings for enforcement.

(c) In any judicial proceeding in which review is sought of a determination under this chapter required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as to the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

July 14, 1955, c. 360, Title III, § 307, as added Dec. 31, 1970, Pub.L. 91–604, § 12(a), 84 Stat. 1707, and amended Nov. 18, 1971, Pub.L. 92–157, Title III, § 302(a), 85 Stat. 464.

[1] So in original. Subsec. (a) was enacted without a par. (2).

§ 1857h—6. Mandatory licensing

Whenever the Attorney General determines, upon application of the Administrator—

(1) that—

(A) in the implementation of the requirements of section 1857c—6, 1857c—7 or 1857f—1 of this title, a right under any United States letters patent, which is being used or intended for public or commercial use and not otherwise reasonably available, is necessary to enable any person required to comply with such limitation to so comply, and

(B) there are no reasonable alternative methods to accomplish such purpose, and

(2) that the unavailability of such right may result in a substantial lessening of competition or tendency to create a monopoly in any line of commerce in any section of the country,

the Attorney General may so certify to a district court of the United States, which may issue an order requiring the person who owns such patent to license it on such reasonable terms and conditions as the court, after hearing, may determine. Such certification may be made to the district court for the district in which the person owning the patent resides, does business, or is found.

July 4, 1955, c. 360, Title III, § 308, as added Dec. 31, 1970, Pub.L. 91–604, § 12(a), 84 Stat. 1708.

§ 1857h—7. Policy review

(a) The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this chapter or other provisions of the authority of the Administrator, contained in any (1) legislation proposed by any Federal department or agency, (2) newly authorized Federal projects for construction and any major Federal agency action (other than a project for construction) to which section 4332(2) (C) of this title applies, and (3) proposed regulations published by any department or agency of the Federal Government. Such written comment shall be made public at the conclusion of any such review.

(b) In the event the Administrator determines that any such legislation, action, or regulation is unsatisfactory from the standpoint of public health or welfare or environmental quality, he shall publish his determination and the matter shall be referred to the Council on Environmental Quality.

July 14, 1955, c. 360, § 309, as added Dec. 31, 1970, Pub.L. 91–604, § 12(a), 84 Stat. 1709.

§ 1857i. Application to other laws; nonduplication of appropriations

(a) Except as provided in subsection (b) of this section, this chapter shall not be construed as superseding or limiting the authorities and responsibilities, under any other provision of law, of the Administrator or any other Federal officer, department, or agency.

* * * * * * * * * *

July 14, 1955, c. 360, Title III, § 310, formerly § 10, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 401, renumbered § 303, Oct. 20, 1965, Pub.L. 89–272, Title I, § 101(4), 79 Stat. 992, amended Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 505, renumbered § 310 and amended Dec. 31, 1970, Pub.L. 91–604, §§ 12(a), 15(c) (2), 84 Stat. 1705, 1713.

§ 1857j. Records and audit

(a) Each recipient of assistance under this chapter shall keep such records as the Administrator shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examinations to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this chapter.

July 14, 1955, c. 360, Title III, § 311, formerly § 11, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 401, renumbered § 304, Oct. 20, 1965, Pub.L. 89–272, Title I, § 101(4), 79 Stat. 992, amended Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 505, renumbered § 311 and amended Dec. 31, 1970, Pub.L. 91–604, §§ 12(a), 15(c) (2), 84 Stat. 1705, 1713.

§ 1857j—1. Comprehensive economic cost studies

(a) In order to provide the basis for evaluating programs authorized by this chapter and the development of new programs and to furnish the Congress with the information necessary for authorization of appropriations by fiscal years beginning after June 30, 1969, the Administrator, in cooperation with State, interstate, and local air pollution control agencies, shall make a detailed estimate of the cost of carrying out the provisions of this chapter; a comprehensive study of the cost of program implementation by affected units of government; and a comprehensive study of the economic impact of air quality standards on the Nation's industries, communities, and other contributing sources of pollution, including an analysis of the national requirements for and the cost of controlling emissions to attain such standards of air quality as may be established pursuant to this chapter or applicable State law. The Administrator shall submit such detailed estimate and the results of such comprehensive study of cost for the five-year period beginning July 1, 1969, and the results of such other studies, to the Congress not later than January 10, 1969, and shall submit a revaluation of such estimate and studies annually thereafter.

(b) The Administrator shall also make a complete investigation and study to determine (1) the need for additional trained State and lo-

cal personnel to carry out programs assisted pursuant to this chapter and other programs for the same purpose as this chapter; (2) means of using existing Federal training programs to train such personnel; and (3) the need for additional trained personnel to develop, operate and maintain those pollution control facilities designed and installed to implement air quality standards. He shall report the results of such investigation and study to the President and the Congress not later than July 1, 1969.

July 14, 1955, c. 360, Title III, § 312, formerly § 305, as added Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 505, renumbered and amended Dec. 31, 1970, Pub.L. 91–604, §§ 12(a), 15(c) (2), 84 Stat. 1705, 1713.

§ 1857j—2. Additional reports to Congress

Not later than six months after November 21, 1967, and not later than January 10 of each calendar year beginning after such date, the Administrator shall report to the Congress on measures taken toward implementing the purpose and intent of this chapter including, but not limited to, (1) the progress and problems associated with control of automotive exhaust emissions and the research efforts related thereto; (2) the development of air quality criteria and recommended emission control requirements; (3) the status of enforcement actions taken pursuant to this chapter; (4) the status of State ambient air standards setting, including such plans for implementation and enforcement as have been developed; (5) the extent of development and expansion of air pollution monitoring systems; (6) progress and problems related to development of new and improved control techniques; (7) the development of quantitative and qualitative instrumentation to monitor emissions and air quality; (8) standards set or under consideration pursuant to subchapter II of this chapter; (9) the status of State, interstate, and local pollution control programs established pursuant to and assisted by this chapter; and (10) the reports and recommendations made by the President's Air Quality Advisory Board.

July 14, 1955, c. 360, Title III, § 313, formerly § 306, as added Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 506, renumbered and amended Dec. 31, 1970, Pub.L. 91–604, §§ 12(a), 15(c) (2), 84 Stat. 1705, 1713.

§ 1857j—3. Labor standards

The Administrator shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on projects assisted under this chapter shall be paid wages at rates not less than those prevailing for the same type of work on

similar construction in the locality as determined by the Secretary of Labor, in accordance with the Act of March 3, 1931, as amended, known as the Davis-Bacon Act. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and section 276c of Title 40.

July 14, 1955, c. 360, Title III, § 314, formerly § 307, as added Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 506, renumbered and amended Dec. 31, 1970, Pub.L. 91–604, §§ 12(a), 15(c) (2), 84 Stat. 1705, 1713.

If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.

July 14, 1955, c. 360, Title III, § 308, formerly § 12, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 401, renumbered § 305, Oct. 20, 1965, Pub.L. 89–272, Title I, § 101(4), 79 Stat. 992, amended and renumbered § 308, Nov. 21, 1967, Pub.L. 90-148, § 2, 81 Stat. 506.

§ 1857*l*. Appropriations

There are authorized to be appropriated to carry out this chapter, other than sections 1857b(f)(3) and (d), 1857b—1, 1857f—6e, and 1858a of this title, $125,000,000 for the fiscal year ending June 30, 1971, $225,000,000 for the fiscal year ending June 30, 1972, $300,000,000 for the fiscal year ending June 30, 1973, and $300,000,000 for the fiscal year ending June 30, 1974.

As amended Apr. 9, 1973, Pub.L. 93–15, § 1(c), 87 Stat. 11.

SUBCHAPTER IV.—NOISE POLLUTION

§ 1858. Office of Noise Abatement and Control; investigation and study of noise and its effects on the public health and welfare; report and recommendations by December 31, 1971

(a) The Administrator shall establish within the Environmental Protection Agency an Office of Noise Abatement and Control, and shall carry out through such Office a full and complete investigation and study of noise and its effect on the public health and welfare in order to (1) identify and classify causes and sources of noise, and (2) determine—

(A) effects at various levels;

(B) projected growth of noise levels in urban areas through the year 2000;

(C) the psychological and physiological effect on humans;

(D) effects of sporadic extreme noise (such as jet noise near airports) as compared with constant noise;

(E) effect on wildlife and property (including values);

(F) effect of sonic booms on property (including values); and

(G) such other matters as may be of interest in the public welfare.

(b) In conducting such investigation, the Administrator shall hold public hearings, conduct research, experiments, demonstrations, and studies. The Administrator shall report the results of such investigation and study, together with his recommendations for legislation or other action, to the President and the Congress not later than one year after December 31, 1970.

(c) In any case where any Federal department or agency is carrying out or sponsoring any activity resulting in noise which the Administrator determines amounts to a public nuisance or is otherwise objectionable, such department or agency shall consult with the Administrator to determine possible means of abating such noise.
July 14, 1955, c. 360, Title IV, § 402, as added Dec. 31, 1970, Pub.L. 91–604, § 14, 84 Stat. 1709.

§ 1858a. Authorization of appropriations

There is authorized to be appropriated such amount, not to exceed $30,000,000, as may be necessary for the purposes of this subchapter.
July 14, 1955, c. 360, Title IV, § 403, as added Dec. 31, 1970, Pub.L. 91–604, § 14, 84 Stat. 1710.

New Jersey Sports and Exposition Authority Act

[THIRD OFFICIAL COPY REPRINT]

ASSEMBLY, No. 2319

STATE OF NEW JERSEY

INTRODUCED APRIL 1, 1971

By Assemblymen DE KORTE, KEAN, PARKER, CONNELL, FRIEDLAND, CRANE, COSTA, DORGAN, VOLK, WILSON, MORAITES, DENNIS, RINALDI, KALTENBACHER, GARIBALDI, CAFIERO, HURLEY, WEIDEL, KRAVARIK, HAELIG, CAPUTO, FIORE, GOLDFARB, FORAN, FONTANELLA, WHITE, SCANCARELLA, HIRKALA, JACKMAN, ESPOSITO, HEALEY, FAY, KIEHN, BROWN, Assemblywoman MARGETTS, Assemblymen MACRAE, POLICASTRO, DUGAN, VREELAND, RICHARDSON, PFALTZ, MERLINO, WOODSON, LEFANTE, EWING, COBB, ROBERTSON, RAYMOND and THOMAS

Referred to Committee on Judiciary

AN ACT to provide stadiums and other buildings and facilities in the Hackensack meadowlands for athletic contests, horse racing

and other spectator sporting events and for ***[conventions,]*** trade shows and other expositions; creating the New Jersey Sports and Exposition Authority and defining its powers and duties; authorizing the issuance of bonds and notes of the authority *[and]* *,* providing for the terms and security thereof*; *and providing an appropriation therefor**.

WHEREAS, The Hackensack Meadowlands Development Commission pursuant to P. L. 1968, c. 404 (C. 13:17-1 et seq.), is charged with the responsibility for reclaiming, planning, developing and redeveloping the land in the Hackensack Meadowlands Districts; and

WHEREAS, The Hackensack Meadowlands Development Commission and the New Jersey Sports and Exposition Authority can cooperate in the development of said Hackensack Meadowlands District by the effectuation of the sports and exposition project in accordance with this act; now, therefore

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

1. This act shall be known as, and may be cited as, the "New Jersey Sports and Exposition Authority Law."

2. The Legislature hereby finds and declares that the general

welfare, health and prosperity of the people of the State will be promoted by the holding of athletic contests, horse racing and other spectator sporting events and of ***[conventions,]*** trade shows and other expositions in the State; that in order to induce professional athletic teams, particularly major league football and baseball teams, to locate their franchises in the State, it is necessary to provide stadiums and related facilities for the use of such teams, in addition to the facilities for horse racing and other spectator sporting events; that such stadiums and other facilities would also accommodate other events and serve other uses which would provide needed recreation, forums and expositions for the public.

It is hereby further found and declared that additional facilities are needed in the State to accommodate ***[large conventions,]*** trade shows and other expositions in order to promote industry and development in the State and provide a forum for public events.

The Legislature further finds and declares that the location of a sports and exposition complex in the Hackensack meadowlands would stimulate the needed development of said meadowlands.

The Legislature has determined that to provide for the establishment and operation of the needed stadiums and other facilities for the holding of such spectator sports, expositions and other public events and uses, a corporate agency of the State shall be created with the necessary powers to accomplish these purposes.

The Legislature further finds that the authority and powers

conferred under this act and the expenditure of public moneys pursuant thereto constitutes a serving of a valid public purpose and that the enactment of the provisions hereinafter set forth is in the public interest and is hereby so declared to be such as a matter of express legislative determination.

3. The following words or terms as used in this act shall have the following meaning unless a different meaning clearly appears from the context:

a. "Act" means this New Jersey Sports and Exposition Authority Law.

b. "Authority" means the New Jersey Sports and Exposition Authority created by section 4 of the act.

c. "Bonds" means bonds issued by the authority pursuant to the act.

d. "Meadowlands complex" means the sports and exposition project authorized by section 6 of the act.

e. "Notes" means notes issued by the authority pursuant to the act.

f. "Project" *[or "projects"]* means the meadowlands complex *[or any other project or facility which the authority is hereafter authorized to undertake]*.

g. "State" means the State of New Jersey.

h. "Hackensack meadowlands" means the Hackensack Meadowlands District as delineated in P. L. 1968, c. 404, s. 4 (C. 13:17-4).

"i. "Meadowlands Commission" means the Hackensack Meadowlands Development Commission created by P. L. 1968, c. 404.

j. "Racing Commission" means the New Jersey Racing Commission created by P. L. 1940, c. 17."

4. a. There is hereby established in the Department of Community Affairs a public body corporate and politic, with corporate succession, to be known as the "New Jersey Sports and Exposition Authority." The authority is hereby constituted as an instrumentality *"of the State"* exercising public and essential governmental functions, and the exercise by the authority of the powers conferred by the act shall be deemed and held to be an essential governmental function of the State *"and the application of the revenue derived from the project to the purposes provided in this act shall be deemed and held to be applied in support of government"*.

b. The authority shall consist of the State Treasurer, the Attorney General and a member of the Hackensack Meadowlands Development Commission to be appointed by the Governor, who shall be members ex officio, and *"*[two]*"* *"four"* members appointed by the Governor with the advice and consent of the Senate for terms of *"*[3]*"* *"4"* years, provided that the members of the authority (other than the ex-officio members) first appointed by the Governor shall serve for terms of *"*[2 years and 3 years,]*"* *"1 year, 2 years, 3 years and 4 years,"* respectively. Each member shall hold office

for the term of his appointment and until his successor shall have been appointed and qualified. A member shall be eligible for reappointment. Any vacancy in the membership occurring other than by expiration of term shall be filled in the same manner as the original appointment but for the unexpired term only.

c. Each appointed member may be removed from office by the Governor, for cause, after a public hearing, and may be suspended by the Governor pending the completion of such hearing. Each member before entering upon his duties shall take and subscribe an oath to perform the duties of his office faithfully, impartially and justly to the best of his ability. A record of such oaths shall be filed in the office of the Secretary of State.

d. The chairman, who shall be chief executive officer of the authority, shall be appointed by the Governor from the members of the authority other than the ex-officio members, and the members of the authority shall elect one of their number as vice chairman thereof. The authority shall elect a secretary and a treasurer who need not be members, and the same person may be elected to serve both as secretary and treasurer. The powers of the authority shall be vested in the members thereof in office from time to time and *[three]* *four* members of the authority shall constitute a quorum at any meeting thereof. Action may be taken and motions and resolutions adopted by the authority at any meeting thereof by the affirmative vote of at least *[three]* *four* members of the author-

ity. No vacancy in the membership of the authority shall impair the right of a quorum of the members to exercise all the powers and perform all the duties of the authority.

e. Each member and the treasurer of the authority shall execute a bond to be conditioned upon the faithful performance of the duties of such member or treasurer, as the case may be, in such form and amount as may be prescribed by the Comptroller of the Treasury. Such bonds shall be filed in the office of the Secretary of State. At all times thereafter the members and treasurer of the authority shall maintain such bonds in full force and effect. All costs of such bonds shall be borne by the authority.

f. The members of the authority shall serve without compensation, but the authority shall reimburse its members for actual expenses necessarily incurred in the discharge of their duties. Notwithstanding the provisions of any other law, no officer or employee of the State shall be deemed to have forfeited or shall forfeit his office or employment or any benefits or emoluments thereof by reason of his acceptance of the office of ex-officio member of the authority or his services therein.

g. Each ex-officio member of the authority may designate an officer or employee of his department or agency to represent him at meetings of the authority, and each such designee may lawfully vote and otherwise act on behalf of the member for whom he constitutes the designee. Any such designation shall be in writing

delivered to the authority and shall continue in effect until revoked or amended by writing delivered to the authority.

h. The authority may be dissolved by act of the Legislature on condition that the authority has no debts or obligations outstanding or that provision has been made for the payment or retirement of such debts or obligations. Upon any such dissolution of the authority all property, funds and assets thereof shall be vested in the State.

i. A true copy of the minutes of every meeting of the authority shall be forthwith delivered by and under the certification of the secretary thereof to the Governor. No action taken at such meeting by the authority shall have force or effect until 15 days after such copy of the minutes shall have been so delivered unless during such 15-day period the Governor shall approve the same in which case such action shall become effective upon such approval. If, in said 15-day period, the Governor returns such copy of the minutes with veto of any action taken by the authority or any member thereof at such meeting, such action shall be null and void and of no effect. The powers conferred in this paragraph (i) upon the Governor shall be exercised with due regard for the rights of the holders of bonds and notes of the authority at any time outstanding, and nothing in, or done pursuant to, this paragraph (i) shall in any way limit, restrict or alter the obligation or powers of the authority or any representative or officer of the

authority to carry out and perform in every detail each and every covenant, agreement or contract at any time made or entered into by or on behalf of the authority with respect to its bonds or notes or for the benefit, protection or security of the holders thereof.

5. Except as otherwise limited by the act, the authority shall have power:

a. To sue and be sued;

b. To have an official seal and alter the same at pleasure;

c. To make and alter bylaws for its organization and internal management and for the conduct of its affairs and business;

d. To maintain an office at such place or places within the State as it may determine

e. To acquire, hold, use and dispose of its income, revenues, funds and moneys;

f. To acquire, lease as lessee or lessor, rent, lease, hold, use and dispose of real or personal property for its purposes;

g. To borrow money and to issue its negotiable bonds or notes and to secure the same by a mortgage on its property or any part thereof and otherwise to provide for and secure the payment thereof and to provide for the rights of the holders thereof;

h. To make and enter into all contracts, leases, and agreements for the use or occupancy of *[its projects]* *the project* or any part thereof or which are necessary or incidental to the performance of its duties and the exercise of its powers under the act;

i. To make surveys, maps, plans for, and estimates of the cost of, *[its projects]* **the project***;

j. To establish, acquire, construct, lease the right to construct, rehabilitate, repair, improve, own, operate and maintain *[its projects]* **the project***, and let, award and enter into construction contracts, purchase orders and other contracts with respect *[to its projects]* **thereto*** in such manner as the authority shall determine, subject only to the provisions of section 21 of the act;

k. To fix and revise from time to time and charge and collect rents, tolls, fees and charges for the use, occupancy or services of *[its projects]* **the project*** or any part thereof or for admission thereto, and for the grant of concessions therein and for things furnished or services rendered by the authority;

l. To establish and enforce rules and regulations for the use or operation of *[its projects]* **the project*** or the conduct of its activities, and provide for the policing and the security of *[its projects]* **the project***;

m. To acquire in the name of the authority by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or, except with respect to the State, by the exercise of the power of eminent domain, any land and other property, including land under water, meadowlands, and riparian rights, which it may determine is reasonably necessary for *[any of its projects]* **the project*** or for the relocation or reconstruction of any highway

by the authority and any and all rights, title and interest in such land and other property, including public lands, reservations, highways or parkways, owned by or in which the State or any county, city, borough, town, township, village, public corporation, or other political subdivision of the State has any right, title or interest, or parts thereof or rights therein and any fee simple absolute or any lesser interest in private property, and any fee simple absolute in, easements upon or the benefit of restrictions upon, abutting property to preserve and protect *[any such]* *the* project;

n. To provide through its employees, or by the grant of one or more concessions, or in part through its employees and in part by grant of one or more concessions, for the furnishing of services and things for the accommodation of persons admitted to or using *[any of its projects]* *the project* or any part thereof;

o. To hold and conduct horse race meetings for stake, purse or reward and to provide and operate a pari-mutuel system of wagering at such meetings but subject only to the provisions of section 7 of the act;

p. To acquire, construct, operate, maintain, improve and make capital contributions to others for transportation and other facilities, services and accommodations for the public using *[its projects]* *the project* and to lease or otherwise contract for the operation thereof;

q. Subject to any agreement with bondholders or noteholders, to

invest moneys of the authority not required for immediate use, including proceeds from the sale of any bonds or notes, in such obligations, securities and other investments as the authority shall deem prudent;

r. To contract for and to accept any gifts or grants or loans of funds or property or financial or other aid in any form from the United States of America or any agency or instrumentality thereof, or from the State or any agency, instrumentality or political subdivision thereof, or from any other source and to comply, subject to the provisions of the act, with the terms and conditions thereof;

s. Subject to any agreements with bondholders or noteholders, to purchase bonds or notes of the authority out of any funds or money of the authority available therefor, and to hold, cancel or resell such bonds or notes;

t. To appoint and employ an executive director and such additional officers who need not be members of the authority and accountants, attorneys, financial advisors or experts and all such other or different officers, agents and employees as it may require and determine their qualifications, terms of office, duties and compensation, all without regard to the provisions of Title 11, Civil Service, of the Revised Statutes*, *provided that, it is the express intent of the Legislature that the authority within its sole discretion shall utilize, to the fullest extent feasible, the services of the officers, personnel and consultants of the Meadowlands Commission**;

u. To do and perform any acts and things authorized by the act under, through, or by means of its officers, agents or employees or by contracts with any person, firm or corporation;

v. To procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as it deems desirable; *[and]*

w. To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in the act*[.]* *; *and*

x. To determine the location, type and character of the project or any part thereof and all other matters in connection with all or any part of the project, notwithstanding any land use plan, zoning regulation, building code or similar regulation heretofore or hereafter adopted by the State, any municipality, county, public body politic and corporate, including but not limited to the Meadowlands Commission, or any other political subdivision of the State, provided that the authority shall consult with the Meadowlands Commission before making any determination as to the location, type and character of the project.

6. a. The authority, pursuant to the provisions of the act, is hereby authorized and empowered to establish, develop, construct, operate, maintain, improve and otherwise effectuate a project to be located in the Hackensack meadowlands **upon a site not to exceed 750 acres** consisting of one or more stadiums, coliseums,

arenas, pavilions, stands, field houses, playing fields, recreation centers, courts, gymnasiums, club houses, a race track for the holding of horse race meetings, and other buildings, structures, facilities, properties and appurtenances incidental and necessary to a complex suitable for the holding of athletic contests or other sporting events, or ***[conventions,]*** trade shows, exhibitions, spectacles, public meetings or other expositions, and such project may include driveways, roads, approaches, parking areas, parks, recreation areas, food vending facilities, restaurants, transportation structures, systems and facilities, and equipment, furnishings, and all other structures and appurtent facilities related to, necessary for, or complementary to the purposes of the project or any facility thereof. As part of the project the authority is empowered to make capital contributions to others for transportation and other facilities, and accommodations for the public using the project. Any part of the project site not occupied or to be occupied by facilities of the project may be leased by the authority for purposes determined by the authority to be consistent with or related to the purposes of the project, including but not limited to hotels and other accommodations for transients and other facilities related or incidental to the project ***[; provided, however, that when any part of the project site not occupied or to be occupied by facilities of the project are leased by the authority to another whose property is not exempt and the leasing of which does not make the real estate

taxable, the estate created by the lease and the appurtenances thereto shall be listed as the property of the lessee thereof, or his assignee, and be assessed and taxed as real estate]***.

b. Revenues, moneys or other funds, if any, derived from the operation or ownership of the meadowlands complex, including the conduct of horse race meetings, shall be applied in accordance with the resolution or resolutions authorizing or relating to the issuance of bonds or notes of the authority to the following purposes and in the following order:

(1) The costs of operation and maintenance of the meadowlands complex and reserves therefor*[, including payments required to be made pursuant to section 18b.]*;

(2) Principal, sinking fund installments and redemption premiums of and interest on any bonds or notes of the authority issued for the purposes of the meadowlands complex or for the purpose of refunding the same, including reserves therefor;

(3) The costs of any major or extraordinary repairs, renewals or replacements with respect to the meadowlands complex or incidental improvements thereto not paid pursuant to paragraph (1) above, including reserves therefor;

[(4) Payments required to be made to the State pursuant to section 7g.;]

(4) Payments required to be made pursuant to section 18b.;

(5) Payments authorized to be made pursuant to section 18 c.;

[(6) Payments to the Hackensack Meadowlands Development Commission at such time and in such manner as shall be designated and prescribed by the authority.]

(6) The balance remaining after application in accordance with the above shall be deposited in the General State Fund **and 40% of all amounts so deposited shall be appropriated to the Meadowlands Commission for any of its purposes authorized by P. L. 1968, c. 404, and any amendments or supplements thereto.*

7. a. The authority is hereby authorized, licensed and empowered to apply to the Racing Commission for a permit **or permits** to hold and conduct, as part of the meadowlands complex, horse race meetings for stake, purse or reward, and to provide a place or places on the race meeting grounds or enclosure for wagering by patrons on the result of such horse races by the parimutuel system, and to receive charges and collect all revenues, receipts and other sums from the ownership and operation thereof; provided that only the authority through its employees shall conduct such horse race meetings and wagering and the authority is expressly prohibited from placing in the control of any other person, firm or corporation the conduct of such horse race meetings, or wagering.

b. Except as otherwise provided in this section, such horse race meetings and parimutuel wagering shall be conducted by the authority in the manner and subject to compliance with the standards set forth in *[the New Jersey laws regulating horse

racing]* *P. L. 1940, c. 17* (C. 5:5-22 et seq.) and the rules, regulations and conditions prescribed by the Racing Commission thereunder for the conduct of horse race meetings and for parimutuel betting at such meetings.

c. Application for said permit **or permits* shall be on such forms and shall include such accompanying data as the Racing Commission shall prescribe for other applicants. The Racing Commission shall proceed to review and act on **any* such application within 30 days after its filing and the Racing Commission is authorized in its sole discretion to determine whether *[the]* **a* permit shall be granted to the authority. If, after such review, the Racing Commission acts favorably on such application, *[the]* **a* permit shall be granted to the authority without any further approval and shall remain in force and effect so long as any bonds or notes of the authority issued for the purposes of the meadowlands complex remain outstanding, the provision of any other law to the contrary notwithstanding. ***In granting a permit to the authority to conduct a horse race meeting, the Racing Commission shall not be subject to any limitation as to the number of tracks authorized for the conduct of horse race meetings pursuant to any provision of P. L. 1940, c. 17 (C. 5:5-22 et seq.).** Said permit shall set forth the dates to be alloted to the authority for its initial horse race meetings Thereafter application for dates for horse race meetings by the authority and the allotment thereof by the Racing Commission,

including the renewal of the same dates theretofore alloted, shall be governed by the applicable provisions of *[the New Jersey laws regulating horse racing]* *P. L. 1940, c. 17* (C. 5:5–22 et seq.). Notwithstanding the provision of any other law to the contrary, the Racing Commission shall allot annually to the authority, in the case of harness racing, not less than 100 racing days, *and in the case of running racing, not less than 56 racing days,* if and to the extent that application is made therefor.

d. No hearing, referendum or other election or proceeding, and no payment, surety or cash bond or other deposit, shall be required for the authority to hold or conduct the horse race meetings with parimutuel wagering herein authorized.

e. The authority shall determine the amount of the admission fee for the races and all matters relating to the collection thereof.

f. Distribution of sums deposited in parimutuel pools to winners thereof and payments from the remaining balances in such pools for stakes, purses or rewards and special trust accounts for breeding and development of horses shall be for the purposes of and in accordance with the provisions of *[the New Jersey laws regulating horse racing]* *P. L. 1940, c. 17 (C. 5:5–22 et seq.)* pertaining thereto. *In addition, as an initial payment to the State, an amount equal to 1/2 of 1% of all parimutuel pools shall be deposited annually in the General State Fund.* All amounts remaining in parimutuel pools after such distribution and payments shall con-

stitute revenues of the authority. *'Except as otherwise expressly provided in this section 7, the authority shall not be required to make any payments to the Racing Commission or others in connection with contributions to parimutuel pools.'*

'[g. The revenues, moneys or other funds, derived from the ownership or operation of the meadowlands complex shall be applied in accordance with section 6 b. to the payment to the State Treasurer for deposit in the General State Fund of an amount which shall be computed on the same basis as amounts required to be paid by permit holders to the Racing Commission pursuant to the New Jersey laws regulating horse racing. If and to the extent full payment of such amount is not made in any year, the deficiency shall become cumulative and be added to amounts to be paid in the ensuing year or years. Except as otherwise expressly provided in this section 7, the authority shall not be required to make any payments to the Racing Commission or others in connection with contributions to parimutuel pools.]'

'[h.]' 'g.' All sums held by the authority for payment of outstanding parimutuel tickets not claimed by the person or persons entitled thereto within the time provided by law shall be paid to the Racing Commission upon the expiration of such time without further obligation to such ticketholder.

'[i.]' 'h.' No admission or amusement tax, excise tax, license or horse racing fee of any kind shall be assessed or collected from

the authority by the State of New Jersey, or by any county or municipality, or by any other body having power to assess or collect license fees or taxes.

[j.] *i.* Any horse race meeting and the parimutuel system of wagering upon the result of horse races held at such race meeting shall not under any circumstances, if conducted as provided in the act and in conformity thereto, be held or construed to be unlawful, other statutes of the State to the contrary notwithstanding.

[k.] *j.* Each employee of the authority engaged in the conducting of horse race meetings shall obtain the appropriate license from the Racing Commission subject to the same terms and conditions as is required of similar employees of other permit holders. The Racing Commission may suspend any member of the authority upon approval of the Governor and the license of any employee of the authority in connection with the conducting of horse race meetings pending a hearing by the Racing Commission for any violation of the New Jersey laws regulating horse racing or any rule or regulation of the commission. Such hearing shall be held and conducted in the manner provided in said laws.

8. a. If the authority shall find it necessary in connection with the undertaking of *[any of its projects]* *the project* to change the location of any portion of any public highway*[,]* or road *[it shall cause the same to be reconstructed at such location as the authority shall deem most favorable and of substantially the same

type and in as good condition as the original highway]* *, *it may contract with any government agency, public or private corporation which may have jurisdiction over said public highway or road to cause said public highway or road to be constructed at such location as the authority in consultation with the Meadowlands Commission shall deem most favorable*. The cost of such reconstruction and any damage incurred in changing the location of any such highway shall be ascertained and paid by the authority as a part of the cost of *[such]* **the* project. Any public highway affected by the construction of *[any]* **the* project may be vacated or relocated by the authority in the manner now provided by law for the vacation or relocation of public roads, and any damages awarded on account thereof shall be paid by the authority as a part of the cost of *[such]* **the* project. In all undertakings authorized by this subsection the authority shall consult and obtain the approval of the New Jersey Department of Transportation.

b. In addition to the foregoing powers the authority and its authorized agents and employees may enter upon any lands, waters and premises for the purpose of making surveys, soundings, drillings and examinations as it may deem necessary or convenient for the purposes of the act, all in accordance with due process of law, and such entry shall not be deemed a trespass nor shall an entry for such purpose be deemed an entry under any condemnation proceedings which may be then pending. The authority shall make

reimbursement for any actual damages resulting to such lands, waters and premises as a result of such activities.

c. The authority shall also have power to make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances (herein called "public utility facilities") of any public utility as defined in R. S. 48:2–13, in, on, along, over or under *[any]* *the* project. Whenever the authority shall determine that it is necessary that any such public utility facilities which now are, or hereafter may be, located in, on, along, over or under *[any]* *the* project shall be relocated in *[such]* *the* project, or should be removed *[from such project]* *therefrom*, the public utility owning or operating such facilities shall relocate or remove the same in accordance with the order of the authority provided, however, that the cost and expenses of such relocation or removal, including the cost of installing such facilities in a new location, or new locations, and the cost of any lands, or any rights or interests in lands, and any other rights, acquired to accomplish such relocation or removal, shall be ascertained and paid by the authority as a part of the cost of *[such]* *the* project. In case of any such relocation or removal of facilities, as aforesaid, the public utility owning or operating the same, its successors or assigns, may maintain and operate such facilities, with the necessary appurtenance, in the new

location or new locations, for as long a period, and upon the same terms and conditions, as it had the right to maintain and operate such facilities in their former location or locations. In all undertakings authorized by this subsection the authority shall consult and obtain the approval of the Public Utilities Commission.

9. a. Upon the exercise of the power of eminent domain, the compensation to be paid thereunder shall be ascertained and paid in the manner provided in chapter 1 of Title 20 of the Revised Statutes insofar as the provisions thereof are applicable and not inconsistent with the provisions contained in this act. The authority may join in separate subdivisions in one petition or complaint the descriptions of any number of tracts or parcels of land or property to be condemned and the names of any number of owners and other parties who may have an interest therein and all such land or property included in said petition or complaint may be condemned in a single proceeding; provided, however, that separate awards be made for each tract or parcel of land or property; and provided further, that each of said tracts or parcels of land or property lies wholly in or has a substantial part of its value lying wholly within the same county.

b. Upon the filing of such petition or complaint or at any time thereafter the authority may file with the clerk of the county in which such property is located and also with the Clerk of the Superior Court a declaration of taking, signed by the authority

declaring that possession of one or more of the tracts or parcels of land or property described in the petition or complaint is thereby being taken by and for the use of the authority. The said declaration of taking shall be sufficient if it sets forth (1) a description of each tract or parcel of land or property to be so taken sufficient for the identification thereof to which there shall be attached a plan or map thereof; (2) a statement of the estate or interest in the said land or property being taken; (3) a statement of the sum of money estimated by the authority by resolution to be just compensation for the taking of the estate or interest in each tract or parcel of land or property described in said declaration; and (4) that, in compliance with the provisions of the act, the authority has established and is maintaining a trust fund as hereinafter provided.

c. Upon the filing of the said declaration, the authority shall deposit with the Clerk of the Superior Court the amount of the estimated compensation stated in said declaration. In addition to the said deposits with the Clerk of the Superior Court the authority at all times shall maintain a special trust fund on deposit with a bank or trust company doing business in the State in an account at least equal to twice the aggregate amount deposited with the Clerk of the Superior Court as estimated compensation for all property described in declarations of taking with respect to which the compensation has not been finally determined and paid to the persons entitled thereto or into court. Said trust fund shall consist of cash

or securities readily convertible into cash constituting legal investment for trust funds under the laws of the State. Said trust fund shall be held solely to secure and may be applied to the payment of just compensation for the land or other property described in such declarations of taking. The authority shall be entitled to withdraw from said trust fund from time to time so much as may then be in excess of twice the aggregate of the amount deposited with the Clerk of the Superior Court as estimated compensation for all property described in declarations of taking with respect to which the compensation has not been finally determined and paid to the persons entitled thereto or into court.

d. Upon the filing of the said declaration as aforesaid and depositing with the Clerk of the Superior Court the amount of the estimated compensation stated in said declaration, the authority without other process or proceedings, shall be entitled to the exclusive possession and use of each tract of land or property described in said declaration and may forthwith enter into and take possession of said land or property, it being the intent of this provision that the proceedings for compensation or any other proceedings relating to the taking of said land or interest therein or other property shall not delay the taking of possession thereof and the use thereof by the authority for the purpose or purposes for which the authority is authorized by law to acquire or condemn such land or other property or interest therein.

e. The authority shall cause notice of the filing of said declaration and the making of said deposit to be served upon each party in interest named in the petition residing in the State, either personally or by leaving a copy thereof at his residence, if known, and upon each party in interest residing out of the State, by mailing a copy thereof to him at his residence, if known. In the event that the residence of any such party or the name of such party is unknown, such notice shall be published at least once in a newspaper published or circulating in the county or counties in which the land is located. Such service, mailing or publication shall be made within 10 days after filing such declaration. Upon the application of any party in interest and after notice to other parties in interest, including the authority, any judge of the superior court assigned to sit for said county may order that the money deposited with the Clerk of the Superior Court or any part thereof be paid forthwith to the person or persons entitled thereto for or on account of the just compensation to be awarded in said proceeding; provided, that each such person shall have filed with the Clerk of the Superior Court a consent in writing that, in the event the award in the condemnation proceeding shall be less than the amount deposited, the court, after notice as herein provided and hearing, may determine his liability, if any, for the return of such difference or any part thereof and enter judgment therefor. If the amount of the award as finally determined shall exceed the amount so deposited, the person or

persons to whom the award is payable shall be entitled to recover from the authority the difference between the amount of the deposit and the amount of the award, with interest at the then legal rate from the date of making the deposit. If the amount of the award shall be less than the amount so deposited, the Clerk of the Superior Court shall return the difference between the amount of the award and the deposit to the authority unless the amount of the deposit or any part thereof shall have theretofore been distributed, in which event the court, on petition of the authority and notice to all persons interested in the award and affording them an opportunity to be heard, shall enter judgment in favor of the authority for such difference against the party or parties liable for the return thereof. The authority shall cause notice of the date fixed for such hearing to be served upon each party thereto residing in the State either personally or by leaving a copy therof at his residence, if known, and upon each party residing out of the State by mailing a copy to him at his residence, if known. In the event that the residence of any party or the name of such party is unknown, such notice shall be published at least once in a newspaper published or circulating in the county or counties in which the land is located. Such service, mailing or publication shall be made at least 10 days before the date fixed for such hearing.

Whenever under chapter 1 of Title 20 of the Revised Statutes the amount of the award may be paid into court, payment may be

made into the Superior Court and may be distributed according to law. The authority shall not abandon any condemnation proceeding subsequent to the date upon which it has taken possession of the land or property as herein provided.

10. a. The authority shall have the power and is hereby authorized from time to time to issue its bonds or notes in such principal amounts as in the opinion of the authority shall be necessary to provide sufficient funds for any of its corporate purposes, including the payment, funding or refunding of the principal of, or interest or redemption premiums on, any bonds or notes issued by it whether the bonds or notes or interest to be funded or refunded have or have not become due, the establishment or increase of such reserves to secure or to pay such bonds or notes or interest thereon and all other costs or expenses of the agency incident to and necessary *[or convenient]* to carry out its corporate purposes and powers.

b. Except as may be otherwise expressly provided in the act or by the authority, every issue of bonds or notes shall be general obligations payable out of any revenues or funds of the authority, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues or funds. The authority may issue such types of bonds or notes as it may determine, including (without limiting the generality of the foregoing) bonds or notes as to which the principal and interest are payable (1) exclusively from the revenues and receipts of the *part of the* project financed

with the proceeds of such bonds or notes; (2) exclusively from the revenues and receipts of certain designated "[projects]" "*parts of the project*" whether or not the same are financed in whole or in part from the proceeds of such bonds or notes; or (3) from its revenues and receipts generally. Any such bonds or notes may be additionally secured by a pledge of any grant, subsidy or contribution from the United States of America or any agency or instrumentality thereof or the State or any agency, instrumentality or political subdivision thereof, or any person, firm or corporation, or a pledge of any income or revenues, funds or moneys of the authority from any source whatsoever.

c. Whether or not the bonds and notes are of such form and character as to be negotiable instruments under the terms of Title 12A, Commercial Transactions, New Jersey Statutes, the bonds and notes are hereby made negotiable instruments within the meaning of and for all the purposes of said Title 12A, subject only to the provisions of the bonds and notes for registration.

d. Bonds or notes of the authority shall be authorized by a resolution or resolutions of the authority and may be issued in one or more series and shall bear such date, or dates, mature at such time or times, bear interest at such rate or rates of interest per annum, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner,

be payable from such sources in such medium of payment at such place or places within or without the State, and be subject to such terms of redemption (with or without premium) as such resolution or resolutions may provide.

e. Bonds or notes of the authority may be sold at public or private sale at such price or prices and in such manner as the authority shall determine. Every bond shall mature and be paid not later than 40 years from the date thereof.

f. Bonds or notes may be issued under the provisions of the act without obtaining the consent of any department, division, commission, board, bureau or agency of the State, and without any other proceeding or the happening of any other conditions or other things than those proceedings, conditions or things which are specifically required by the act.

g. Bonds and notes of the authority issued under the provisions of the act shall not be in any way a debt or liability of the State or of any political subdivision thereof other than the authority and shall not create or constitute any indebtedness, liability or obligation of the State or of any such political subdivision or be or constitute a pledge of the faith and credit of the State or of any such political subdivision but all such bonds and notes, unless funded or refunded by bonds or notes of the authority, shall be payable solely from revenues or funds pledged or available for their payment as authorized in the act. Each bond and note shall contain on its face

a statement to the effect that the authority is obligated to pay the principal thereof or the interest thereon only from revenues or funds of the authority and that neither the State nor any political subdivision thereof is obligated to pay such principal or interest and that neither the faith and credit nor the taxing power of the State or any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds or notes.

h. All expenses incurred in carrying out the provisions of the act shall be payable solely from revenues or funds provided or to be provided under the provisions of the act and nothing in the act shall be construed to authorize the authority to incur any indebtedness or liability on behalf of or payable by the State or any political subdivision thereof.

11. In any resolution of the authority authorizing or relating to the issuance of any bonds or notes, the authority, in order to secure the payment of such bonds or notes and in addition to its other powers, shall have power by provisions therein which shall constitute covenants by the authority and contracts with the holders of such bonds or notes:

a. To pledge all or any part of its rents, fees, tolls, revenues or receipts to which its right then exists or may thereafter come into existence, and the moneys derived therefrom, and the proceeds of any bonds or notes;

b. To pledge any lease or other agreement or the rents or other

revenues thereunder and the proceeds thereof;

c. To mortgage all or any part of its property, real or personal, then owned or thereafter to be acquired;

d. To covenant against pledging all or any part of its rents, fees, tolls, revenues or receipts or its leases or agreements or rents or other revenues thereunder or the proceeds thereof, or against mortgaging all or any part of its real or personal property then owned or thereafter acquired, or against permitting or suffering any lien on any of the foregoing;

e. To covenant with respect to limitations on any right to sell, lease or otherwise dispose of any project or any part thereof or any property of any kind;

f. To covenant as to any bonds and notes to be issued and the limitations thereon and the terms and conditions thereof and as to the custody, application, investment, and disposition of the proceeds thereof;

g. To covenant as to the issuance of additional bonds or notes or as to limitations on the issuance of additional bonds or notes and on the incurring of other debts by it;

h. To covenant as to the payment of the principal of or interest on the bonds or notes, or any other obligations, as to the sources and methods of such payment, as to the rank or priority of any such bonds, notes or obligations with respect to any lien or security or as to the acceleration of the maturity of any such bonds, notes or obligations;

i. To provide for the replacement of lost, stolen, destroyed or mutilated bonds or notes;

j. To covenant against extending the time for the payment of bonds or notes or interest thereon;

k. To covenant as to the redemption of bonds or notes and privileges of exchange thereof for other bonds or notes of the authority;

l. To covenant as to the rates of toll and other charges to be established and charged, the amount to be raised each year or other period of time by tolls or other revenues and as to the use and disposition to be made thereof;

m. To covenant to create or authorize the creation of special funds or moneys to be held in pledge or otherwise for construction, operating expenses, payment or redemption of bonds or notes, reserves or other purposes and as to the use, investment, and disposition of the moneys held in such funds;

n. To *[stablish]* *establish* the procedure, if any, by which the terms of any contract or covenant with or for the benefit of the holders of bonds or notes may be amended or abrogated, the amount of bonds or notes the holders of which must consent thereto, and the manner in which such consent may be given;

o. To covenant as to the construction, improvement, operation or maintenance of its real and personal property, the replacement thereof, the insurance to be carried thereon, and the use and dis-

position of insurance moneys;

p. To provide for the release of property, leases or other agreements, or revenues and receipts from any pledge or mortgage and to reserve rights and powers in, or the right to dispose of, property which is subject to a pledge or mortgage;

q. To provide for the rights and liabilities, powers and duties arising upon the breach of any covenant, condition or obligation and to prescribe the events of default and the terms and conditions upon which any or all of the bonds, notes or other obligations of the authority shall become or may be declared due and payable before maturity and the terms and conditions upon which any such declaration and its consequences may be waived;

r. To vest in a trustee or trustees within or without the State such property, rights, powers and duties in trust as the authority may determine, including the right to foreclose any mortgage, and to limit the rights, duties and powers of such trustee;

s. To execute all mortgages, bills of sale, conveyances, deeds of trust and other instruments necessary or convenient in the exercise of its powers or in the performance of its covenants or duties;

t. To pay the costs or expenses incident to the enforcement of such bonds or notes or of the provisions of such resolution or of any covenant or agreement of the authority with the holders of its bonds or notes;

u. To limit the powers of the authority to construct, acquire or

operate any structures, facilities or properties which may compete or tend to compete with *[any of its projects]* **the project**;

v. To limit the rights of the holders of any bonds or notes to enforce any pledge or covenant securing bonds or notes; and

w. To make covenants other than in addition to the covenants herein expressly authorized, of like or different character, and to make such covenants to do or refrain from doing such acts and things as may be necessary, or convenient and desirable, in order to better secure bonds or notes or which, in the absolute discretion of the authority, will tend to make bonds or notes more marketable, notwithstanding that such covenants, acts or things may not be enumerated herein.

12. Any pledge of revenues, moneys, funds or other property made by the authority shall be valid and binding from the time when the pledge is made; the revenues, moneys, funds or other property so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge of revenues, moneys or funds is created need be filed or recorded except in the records of the authority.

13. Neither the members of the authority nor any person executing bonds or notes issued pursuant to this act shall be liable personally on such bonds or notes by reason of the issuance thereof.

14. The authority may establish such reserves, funds or accounts as may be, in its discretion, necessary or desirable to further the accomplishment of the purposes of the authority or to comply with the provisions of any agreement made by or any resolution of the authority.

15. The State of New Jersey does hereby pledge to and covenant and agree with the holders of any bonds or notes issued pursuant to authority of the act that the State will not limit or alter the rights or powers hereby vested in the authority to acquire, construct, maintain, improve, repair and operate *[any]* *the* project *in any way that would jeopardize the interest of such holders*, or to perform and fulfill the terms of any agreement made with the holders of such bonds or notes, or to fix, establish, charge and collect such rents, fees, rates or other charges as may be convenient or necessary to produce sufficient revenues to meet all expenses of the authority and fulfill the terms of any agreement made with the holders of such bonds and notes, together with interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of such holders, until the bonds, together with interest thereon, are fully met and discharged or provided for.

Sports and Exposition Authority Act

16. The State and all public officers, governmental units and agencies thereof, all banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustee and other fiduciaries, may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds or notes issued pursuant to the act, and such bonds or notes shall be authorized security for any and all public deposits.

17. All counties and municipalities and other governmental subdivisions, all authorities, and all public departments, agencies and commissions of the State, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the authority at its request upon such terms and conditions as the governing body or other proper authorities of such counties, municipalities and governmental subdivisions, authorities and departments, agencies or commissions of the State may deem reasonable and fair and without the necessity for any advertisement, order of court or other action or formality, other than the authorizing ordinance of the governing body of the municipality, the authorizing resolution of the governing body of the county, or the regular and formal action of any public body concerned, any

real property or interest therein which may be necessary or convenient to the effectuation of the purposes of the authority, including public highways and other real property already devoted to public use*, *provided that such real property is located within the 750 acre site authorized for the project**. No property of the State, other than meadowlands, riparian lands or lands under water and similar lands or interests therein referred to in Title 12, Commerce and Navigation, and Title 13, Conservation and Development, of the Revised Statutes, as amended, shall be so granted, leased or conveyed to the authority except upon payment to the State of such price therefor as may be fixed by the State House Commission.

18. a. All projects and other property of the authority is hereby declared to be public property devoted to an essential public and governmental function and purpose and shall be exempt from all taxes and special assessments of the State or any political subdivision thereof*; *provided, however, that when any part of the project site not occupied or to be occupied by facilities of the project is leased by the authority to another whose property is not exempt and the leasing of which does not make the real estate taxable, the estate created by the lease and the appurtenances thereto shall be listed as the property of the lessee thereof, or his assignee, and be assessed and taxed as real estate**. All bonds or notes issued pursuant to the act are hereby declared to be issued by a body corporate

and public of the State and for an essential public and governmental purpose and such bonds and notes, and the interest thereon and the income therefrom, and all funds, revenues, income and other moneys received or to be received by the authority and pledged or available to pay or secure the payment of such bonds or notes, or interest thereon, shall at all times be exempt from taxation except for transfer, inheritance and estate taxes.

b. To the end that there does not occur an undue loss of future tax revenues by reason of the acquisition of real property by the authority for the meadowlands complex, the authority annually shall make payments in-lieu-of-taxes to the municipality in which such property is located *[in amounts equal to the amounts of taxes assessed upon such property in the tax year in which this act becomes effective]* *in an amount computed in each year with respect to each such municipality by multiplying the total amount to be raised by real property taxation in each such year by a fraction, the numerator of which is the amount of real property taxes assessed against the property acquired by the authority in the tax year in which this act becomes effective and the denominator of which is the total amount to be raised by real property taxation in such municipality in the tax year in which this act becomes effective*. Such payments shall be made in each year commencing with the first year subsequent to the year in which such real property shall have been converted from a taxable to an exempt status by

reason of acquisition thereof by the authority.

c. The authority is further authorized and empowered to enter into any agreement or agreements with the *[Hackensack]* Meadowlands *[Development]* Commission *[established pursuant to P. L. 1968, c. 404,]* or with any county or municipality *located in whole or part within the Hackensack meadowlands* whereby the authority will undertake to pay any additional amounts to compensate for any loss of tax revenues by reason of the acquisition of any real property by the authority for the meadowlands complex *or to pay amounts to be used by such commission, county or municipality in furtherance of the development of the Hackensack meadowlands, including the meadowlands complex*. The commission and every such county and municipality is authorized and empowered to enter into such *[tax]* agreements with the authority and to accept payments which the authority makes thereunder.

d. All payments *to municipalities* pursuant to subsections b. and c. shall be treated as payments in-lieu-of-property taxes for all purposes of article 9 of P. L. 1968, c. 404 (C. 13:17-60 to 13:17-76).

19. On or before the last day of February in each year the authority shall make an annual report of its activities for the preceding calendar year to the Governor and to the Legislature. Each such report shall set forth a complete operating and financial statement covering its operations during the year. The authority shall cause an audit of its books and accounts to be made at least once

in each year by certified public accountants and the cost thereof shall be considered an expense of the authority and a copy thereof shall be filed with the Comptroller of the Treasury.

20. All officers, departments, boards, agencies, divisions and commissions of the State are hereby authorized and empowered to render any and all of such services to the authority as may be within the area of their respective governmental functions as fixed or established by law, and as may be requested by the authority. The cost and expense of any such services shall be met and provided for by the authority.

21. The authority, in the exercise of its authority to make and enter into contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers, shall adopt standing rules and procedures providing that, except as hereinafter provided, no contract on behalf of the authority shall be entered into for the doing of any work, or for the hiring of equipment or vehicles, where the sum to be expended exceeds the sum of $2,500.00 unless the authority shall first publicly advertise for bids therefor, and shall award the contract to the lowest responsible bidder; provided, however, that such advertising shall not be required where the contract to be entered into is one for the furnishing or performing services of a professional nature or for the supplying of any product or the rendering of any service by a public utility subject to the jurisdiction of the Public Utilities Commission

and tariffs and schedules of the charges, made, charged, or exacted by the public utility for any such products to be supplied or services to be rendered are filed with said commission. This section shall not prevent the authority from having any work done by its own employees, nor shall it apply to repairs, or to the furnishing of materials, supplies or labor, or the hiring of equipment or vehicles, when the safety or protection of its or other public property or the public convenience require, or the exigency of the authority's service will not admit of such advertisement. In such case the authority shall, by resolution, passed by the affirmative vote of a majority of its members, declare the exigency or emergency to exist, and set forth in the resolution the nature thereof and the approximate amount to be so expended.

*22. *The site of the meadowlands complex shall not exceed 750 acres. It is the express intent of the Legislature that the powers of the authority to undertake the meadowlands complex shall be limited to the site of the project and that, with respect to the remainder of the Hackensack meadowlands, the rights, powers, duties and purposes of the Meadowlands Commission shall not in any way be limited or abridged by the provisions of this act.*

23. It is the express intent of the Legislature that the authority in undertaking the meadowlands complex shall consult with the Meadowlands Commission and the Department of Environmental Protection with respect to the ecogolical factors constituting the

environment' of the Hackensack meadowlands to the end that the delicate environmental balance of the Hackensack meadowlands may be maintained and preserved.

[22.] *24.* It is the intent of the Legislature that in the event of any conflict or inconsistency in the provisions of the act and any other acts pertaining to matters herein established or provided for or in any rules and regulations adopted under the act or said other acts, to the extent of such conflict or inconsistency, the provisions of the act and the rules and regulations adopted thereunder shall be enforced and the provisions of such other acts and rules and regulations adopted thereunder shall be of no force and effect.

[23.] *25.* If any clause, sentence, paragraph, section or part of the act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

[24.] *26.* The act shall be construed liberally to effectuate the legislative intent and the purposes of the act as complete and independent authority for the performance of each and every act and thing herein authorized and all powers herein granted shall be broadly interpreted to effectuate such intent and purposes and not

as a limitation of powers.

[25. For the purpose of defraying its preliminary costs and expenses under the act the authority is hereby authorized to borrow from time to time from amounts available in the General State Fund on such terms as may be determined by the Executive Director of the State Treasury, and all such borrowings shall be repaid out of the proceeds of the first bonds issued by the authority or other available funds.]

27. There is hereby appropriated to the authority from the General State Fund the sum of $1,500,000.00, or so much thereof as may be necessary, for the purposes of carrying out its functions and duties pursuant to this act. Such appropriation shall be repaid to the General State Fund as soon as practicable out of the proceeds of the first bonds issued by the authority or other available funds.

[26.] **28.** This act shall take effect immediately.

38 Fed. Reg. 6279

(March 8, 1973)

Title 32—National Defense

CHAPTER XVI—SELECTIVE SERVICE SYSTEM

PART 1661—CLASSIFICATION OF CONSCIENTIOUS OBJECTORS

Types of Decisions; Correction

The cross-reference in § 1661.10(a)(2) line 5, that appeared in FR Doc. 72-22438 (37 FR 28900 (December 30, 1972)) should read §§ 1661.3 and 1661.4.

BYRON V. PEPITONE,
Acting Director.

MARCH 5, 1973.

[FR Doc.73-4477 Filed 3-7-73;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Maintenance of National Ambient Air Quality Standards

On April 30, 1971, pursuant to section 109 of the Clean Air Act, as amended, the Administrator promulgated national primary and secondary ambient air quality standards for six pollutants. The Act requires that the primary standards protect the public health with an adequate margin of safety and that the secondary standards protect the public welfare from any known or anticipated adverse affects. Under section 110 of the Act, States are required to prepare and submit to the Administrator plans for implementing the national ambient air quality

standards in each air quality control region in the State. The Administrator published on May 31, 1972, his initial approvals and disapprovals of the State implementation plans developed and submitted under these provisions of Federal law.

On January 31, 1973, the U.S. Court of Appeals for the District of Columbia Circuit decided the case of "Natural Resources Defense Council, Inc., et al. v. Environmental Protection Agency" (Civil Action No. 72–1522) and seven other related cases. The Court's order required the Administrator to review within 30 days from the date of the order the maintenance provisions of all State implementation plans, that were approved on May 31. The Administrator was directed to disapprove plans "which do not provide for measures necessary to insure the maintenance of the primary standard after May 31, 1975, and those plans which do not analyze the problem of maintenance of standards in a manner consistent with applicable regulations * * *."

The Administrator has completed his review as required by the court order. This further examination of State plans confirmed that no State plan contained adequate growth projections for any significant period of time into the future. Moreover, it is recognized that maintenance of standards cannot be insured simply by projecting future growth and curtailing present emissions in order to provide opportunities for this future growth of emission sources. Since the plans must provide for maintenance of the standards over an indefinite period of time, it is the Administrator's determination that the most practical manner in which to adequately and effectively provide for maintenance of the stand-

ards at this time is to require State plans to contain procedures by which each State will review a wide range of new sources and causes of air pollution and will have the authority to prevent the development of such sources or causes where necessary to insure that the standards are maintained.

Maintenance is partially insured by the provisions of 40 CFR 51.18 which require each State plan to have adequate procedures to review, and where necessary prevent, the construction or modification of any stationary source at a location where emissions from that source would result in interference with the attainment or maintenance of a national standard or with the State control strategy. Where State plans were judged inadequate in this respect, the Administrator has promulgated or will promulgate such regulations. In addition, new source performance standards promulgated by the Administrator under section 111 of the Act and motor vehicle emission standards promulgated under section 202 will also serve to mitigate the impact of growth.

However, these measures, by themselves, are not adequate to insure the maintenance of standards, particularly for air pollutants emitted largely by motor vehicles. Nor do they deal with the problem of emissions generated not by the facility being constructed but by sources associated with such facility, including general urban and commercial development. In the Administrator's judgment, it is also necessary to require States to review, and where necessary prevent, the construction of facilities which may result in increased emissions from motor vehicle activity or emissions from stationary sources that could cause or contribute to violations of national ambient air quality standards. Such fa-

cilities generally are designated "complex sources." EPA guidelines did not require this and the review of State plans indicates that no State included such a provision in its implementation plan. Accordingly, in order to comply with the court order, it has been determined that all State plans must be disapproved to the extent that they do not contain provisions which will permit the review, and provide the authority to prevent, the construction, modification, or operation of complex sources at a location where emissions associated with such source would result in violation of a national standard or the State's control strategy.

The action taken herein to disapprove State implementation plans with respect to their lack of provisions for review of complex sources is not intended to affect, and should not be construed as affecting, the validity of prior approvals of State plans by the Administrator or prior promulgation of regulations to correct State plan deficiencies. Provisions of approved or promulgated plans remain in effect and are enforceable by the State and/or Federal Government in accordance with the provisions of the Clean Air Act.

The Administrator has also determined that many States' procedures for the review of stationary sources, and the consequent authority to disapprove the construction or modification of any such source where it would interfere with the maintenance of a national standard, contain a variety of exemptions so that certain sources need not be reviewed by the State prior to construction or modification. While such exemptions will not necessarily interfere with the ability of the State to attain the national standards, the exempted sources may, at some time in the future, comprise significant

sources of air pollution which should be reviewed in order to insure maintenance of the standards. Accordingly, the Administrator will also set forth a regulation that will specify a limitation on the sources that may be exempted from a new source review procedure.

In order to correct the disapprovals set forth in this document, the Administrator will require States, where necessary, to revise their review procedures for construction or modification of sources. He will also require all States to adopt and submit to him a legally enforceable procedure for reviewing the impact of the construction or modification of a "complex source" and for preventing the construction or modification of such complex source where necessary to attain and maintain a national standard or to prevent interference with the State control strategy. The Administrator will propose amendments to 40 CFR Part 51 which will set forth such requirements. This document is intended to be an advance notice of proposed rule making and will appear at page 6290 of this issue.

The complex source review procedures will also be required as part of the plan for attainment of the standards. EPA is continuing to review the problem of maintenance of standards to determine other techniques or procedures that could be employed by States as part of their plans.

At the present time, the Environmental Protection Agency is preparing draft regulations which will identify the types of facilities to be covered by complex source regulations and some of the factors to be considered in determining the impact that such facilities will have on air quality, as a result of emissions directly from such facilities and from air pollution sources associated with them.

A complex source is generally defined as a facility that has or leads to secondary or adjunctive activity which emits or may emit a pollutant for which there is a national standard. These sources include, but are not limited to:

(1) Shopping centers;
(2) Sports complexes;
(3) Drive-in theaters;
(4) Parking lots and garages;
(5) Residential, commercial, industrial, or institutional developments;
(6) Amusement parks and recreational areas;
(7) Highways;
(8) Sewer, water, power, and gas lines;

and other such facilities which will result in increased emissions from motor vehicles or other stationary sources. The regulation will further provide that each State must have procedures whereby, prior to construction or modification of such sources, the State will be able to determine whether the construction or modification of the complex source would cause violations of the applicable portions of a control strategy or interfere with the attainment or maintenance of the national ambient air standards. States will be required to have the authority to disapprove the construction or modification where it would have such a result. The regulation will set forth the basic minimum considerations which should be addressed by a State before it can approve or disapprove any such construction or modification. States should begin now to determine their legal authority to adopt such a regulation, and to obtain such authority where it is lacking.

The order of the court on January 31, 1973, required the Administrator, upon disapproval of State plans, to direct

States to submit approval provisions for maintaining the standards by April 15, 1973. Since this does not provide States with adequate time to develop corrective regulations and submit them to the Administrator in accordance with the procedural requirements of 40 CFR 51.4, the Administrator has applied to the court for a modification of that order to defer submittal of plans by the States until after the promulgation of the amendments to Part 51 establishing the requirement of a complex source provision. The new timetable requested from the court would permit proposal of the amendment to 40 CFR Part 51 on April 15 with the final regulation being promulgated by June 11, 1973. State plans providing for maintenance of the standards and containing such a procedure would have to be submitted by August 15. Should the court not modify its order, States will have to submit their plan for maintenance of the standards by April 15, 1973. Should the court grant the motion, the disapproval prescribed below will be amended to set forth the later date for submittal of the plans.

The amendments set forth below are effective from the date of publication in the FEDERAL REGISTER since the amendments are made pursuant to a court order which requires the Agency to disapprove the State plans which do not provide for maintenance of the primary standards.

Dated: March 2, 1973.

WILLIAM D. RUCKELSHAUS,
Administrator,
Environmental Protection Agency.

Subpart A of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended by adding § 52.22 as follows:

38 Fed. Reg. 6279

§ 52.22 Maintenance of national standards.

Subsequent to January 31, 1973, the Administrator reviewed again State implementation plan provisions for insuring the maintenance of the national standards. The review indicates that State plans generally do not contain regulations or procedures which adequately address this problem. Accordingly, all State plans are disapproved with respect to maintenance because such plans lack enforceable procedures or regulations for reviewing and preventing construction or modification of facilities which will result in an increase of emissions from State plans are disapproved with respect other sources of pollutants for which there are national standards. The disapproval applies to all States listed in Subparts B through DDD of this part. Nothing in this section shall invalidate or otherwise affect the obligations of States, emission sources, or other persons with respect to all portions of plans approved or promulgated under this part. Pursuant to an order of the U.S. Court of Appeals for the District of Columbia Circuit entered on January 31, 1973, State plans providing for maintenance of the national standards must be submitted to the Administrator no later than April 15, 1973.

[FR Doc.73-4405 Filed 3-7-73;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER I—FEDERAL PROCUREMENT REGULATIONS

PART 1-15—CONTRACT COST PRINCIPLES AND PROCEDURES

Miscellaneous Amendments

38 Fed. Reg. 6879

Correction

In FR Doc. 73-3376, appearing at page 4753 in the issue of Thursday, February 22, 1973, the following changes should be made:

1. On page 4755, directly under § 1-15.306-4(a), place a line of five stars.

2. In the first line of paragraph (g) of § 1-15.309-7, in the second column on page 4757, after the word "charging", insert "*personal services.* Budget estimates on a".

3. In the second column on page 4758, directly above § 1-15.309-13, place a line of five stars.

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER E—FOREST MANAGEMENT (5000)

[Circular 2339]

SALES OF FOREST PRODUCTS

Timber Sale Contract Procedures

On page 26114 of the FEDERAL REGISTER of December 8, 1972, there was published a notice and text of a proposed amendment to Group 5400 of Title 43, Code of Federal Regulations. The purpose of the amendment is to update the regulations relating to timber sale contracts and bidding procedures. These changes include definition of "loading point," permission to submit a payment bond to assure payment for timber to be cut, revision and clarification of bidding procedures, provision for the resale of timber involved in uncompleted contracts, and extension of the maximum term for a timber contract from 30 to 36 months.

Interested persons were given until

January 8 to submit comments, suggestions, or objections to the proposed amendment. No comments were received. However, it has been determined that the format of portions of the proposal would be more self-explanatory if the text was rearranged. Accordingly, several editorial changes are made and the proposed amendments to §§ 2451.2, 2451.4, and 2461.2 are revised.

Since these are nonsubstantive modifications, the proposed amendment is hereby adopted as revised, and is set forth below in its entirety. This amendment shall become effective July 1, 1973.

JOHN C. WHITAKER,
Acting Secretary
of the Interior.

MARCH 1, 1973.

Group 5400 of Chapter II of Title 43 of the Code of Federal Regulations is amended as follows:

PART 5400—SALES OF FOREST PRODUCTS; GENERAL

1. In § 5400.0–5 a new paragraph (m) is added to read as follows:

§ 5400.0–5 Definitions.

* * * * *

(m) "Loading point" means any landing or other area in which logs are capable of being loaded for transportation out of the contract area: *Provided, however,* That right-of-way timber which has been cut shall not be considered to be at a loading point until such time as logs from any source are actually transported over that portion of the right-of-way.

PART 5440—CONDUCT OF SALES

Subpart 5441—Advertised Sales

38 Fed. Reg. 6279

2. In § 5441.1–1 the last sentence is amended to read as follows:

§ 5441.1–1 Bid deposits.

• • • The deposit of the successful bidder will be applied on the purchase price at the time the contract is signed by the authorized officer unless the deposit is a corporate surety bid bond or a bond is accepted by the Bureau to secure payment of the first installment.

3. Subpart 5442 is revised to read as follows:

Subpart 5442—Bidding Procedure

Sec.

5442.1 Procedure.

5442.2 Resale of timber from uncompleted contracts.

5442.3 Rejection of bids; waiver of minor deficiencies.

AUTHORITY: Sec. 5, 50 Stat. 875, 61 Stat. 631, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 et seq.

38 Fed. Reg. 9598

(April 18, 1973)

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 51]

PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

Notice of Proposed Rulemaking

On August 14, 1971 (36 FR 15486), the Administrator of the Environmental Protection Agency promulgated as 42 CFR part 420 regulations for the preparation, adoption, and submittal of State implementation plans under section 110 of the Clean Air Act, as amended. Those regulations were republished November 25, 1971 (36 FR 22369), as 40 CFR part 51.

On March 8, 1973 (38 FR 6281), the Administrator issued an advance notice of proposed rulemaking that would amend those regulations. The amendments to 40 CFR part 51 are proposed herein and are designed primarily to extend the requirements for review prior to construction or modification of sources or causes of air pollution.

In 40 CFR 51.18, the original guidelines required States to have procedures for review of new stationary sources of air pollution to determine whether such new sources would interfere either with the attainment or maintenance of a national ambient air quality standard or with the control strategy of the State adopted in its implementation plan. Pursuant to 40 CFR 51.11(a)(4), States were also required to have the legal authority to prevent the construction or modification of such sources where they would interfere with the attainment or maintenance of

the national standards.

As used in 40 CFR 51.18, the term "stationary sources" generally has been interpreted to mean facilities that affect or may affect air quality primarily because of their own air pollutant emissions. It is generally recognized, however, that not only the types of facilities commonly known as stationary sources but also facilities such as airports, amusement parks, highways, shopping centers, and sport complexes also affect or may affect air quality by indirect means, primarily by means of the mobile source activity associated with them. Such indirect effects on air quality may also have an impact on maintenance of the national ambient air quality standards. Accordingly, the proposal set forth below would require, with respect not only to "stationary sources," in the traditional sense, but also certain other types of facilities, an assessment of both direct and indirect effects on air quality prior to their construction and modification and a determination as to whether there would be interference with maintenance of any national standard. In the Administrator's judgment, this amplification of the requirements of 40 CFR 51.18 is a step necessary to insure the maintenance of the national ambient air quality standards, particularly for mobile source-related air pollutants, beyond 1975.

The Clean Air Act requires that the national ambient air quality standards be attained and maintained throughout each air quality control region. The purpose of the review and determination procedures required under 40 CFR 51.18 is primarily to insure that the national standards will not be violated in the vicinity of a major new facility. By avoiding local violations in this manner, it is anticipated that the need for pe-

riodic revisions of State implementation plans can be reduced or eliminated. In the absence of such procedures, implementation plan revisions affecting entire air quality control regions might be needed to eliminate localized violations of the national standards. Furthermore, such reviews and determinations will take place before the fact, while an implementation plan revision would be undertaken after a violation is detected; solving problems before the fact is likely to be less disruptive than subsequent action.

It is recognized that, in many areas, local governmental agencies have the responsibility for final decisionmaking on applications for approval to construct or modify many types of facilities, buildings, structures, and installations. Providing for such decisionmaking at the local level is consistent with the Clean Air Act. Accordingly, the proposal set forth below would further revise 40 CFR 51.18 to reflect the Administrator's intent that the procedures required by § 51.18 may be carried out by local governmental agencies; such agencies could include, but would not be limited to, air pollution control agencies. States still will be required to have legal authority to prevent the construction, modification, or operation of facilities which, either directly or indirectly, would interfere with maintenance of a national standard.

It should be emphasized that the primary purpose of the review procedures is to insure that proposed projects are designed and located in a manner consistent with air quality requirements. If the proposed project would interfere with attainment or maintenance of a national standard, changes in the design of the project, including extension of existing

mass transit, for example, should be considered. Only if the project cannot be made compatible with air quality requirements would it be necessary to prevent the construction of it.

The advance notice of proposed rulemaking published March 8, 1973 (38 FR 6281), listed several types of facilities which, because of adjunctive mobile source activity, may indirectly affect air quality and therefore were among the types of facilities for which new source review might be appropriate. The proposed amendments to 40 CFR 51.18 would not specify the types of facilities which must be subject to review and determination. A proposed appendix O to 40 CFR part 51 would provide guidance to State and local agencies in determining which will be covered.

The Administrator is aware that other Federal laws require an assessment of the air quality impact of some of the types of facilities which would be subject to the requirements of 40 CFR 51.18, if amended as proposed. For example, section 102(2)(C) of the National Environmental Policy Act and section 109(j) of the Federal-Aid Highway Act impose similar requirements with respect to certain types of facilities, notably highways and airports. To avoid duplication of data gathering and analysis, the Administrator urges responsible State or local governmental agencies to make use of such assessments, insofar as possible, in satisfying the procedural requirements set forth in 40 CFR 51.18. Such assessments do not, however, relieve the State or local governmental agency responsible for approval/disapproval of construction or modification from fulfilling that responsibility in the same manner as it must for any other facilities.

Though not required by the proposed amendments to 40 CFR 51.18, greater

State and local attention to the regional air quality impact of growth clearly would be desirable in the long run. State and local agencies are encouraged to initiate efforts to make a careful analysis of projected growth of population, industrial activity, and use of motor vehicles and estimate how such growth is likely to affect air quality. Such efforts are of particular importance in air quality control regions where transportation control programs already are required to insure attainment of the national standards for motor vehicle-related air pollutants.

Finally, the Environmental Protection Agency intends to reexamine existing State plan provisions for the review of new "stationary sources." The scope of these provisions varies from State to State and region to region. As a result of this review, EPA will, if necessary, suggest or require a widening of the scope of review, i.e., that it apply to additional types of sources in cases where present exemptions from review seem unwarranted.

The Agency is interested in soliciting specific comments concerning all of the issues raised by this proposal. The types of sources to be reviewed, the procedures for review, including the extent and manner of public participation in the process and the flexibility to be allowed to State and local governments in fulfilling this function, are of particular interest. Also of importance is any difficulty which States or local governments expect to experience in establishing the necessary procedures. These difficulties may include the problems of acquiring the legal authority necessary to comply with the requirements. Comments are also invited on any issues not specifically mentioned in this proposal, but which any interested party believes is relevant

to its form or content.

These amendments are being proposed pursuant to an order of the United States Court of Appeals for the District of Columbia Circuit in the case of *Natural Resources Defense Council, Inc., et al.* v. *EPA*, case No. 72–1522, and seven related cases, which was entered on January 31, 1973, and modified on February 12, 1973. As required by that order, these regulations must be promulgated no later than June 11, 1973. Subsequent to such promulgation, States will be required to submit their plan revisions to comply with these new requirements no later than August 15, 1973. After such submission, the Environmental Protection Agency will have 2 months to review and approve or disapprove the revisions and an additional 2 months to propose and promulgate regulations to replace any disapproved State procedures.

Interested persons may participate in this rulemaking by submitting written comments in triplicate to the Environmental Protection Agency, Standards Implementation Branch, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711. All relevant comments received not later than May 8, 1973, will be considered. Receipt of comments will be acknowledged, but substantive responses to individual comments will not be provided. Comments received will be available for inspection at normal business hours at the Office of Public Affairs, 401 M Street SW., Washington, D.C. 20460. The changes proposed by this notice, with appropriate modification, will be effective on republication in the FEDERAL REGISTER. This notice of proposed rulemaking is issued under the authority of section 301(a) of the Clean Air Act (42 U.S.C. 1857 et seq.).

38 Fed. Reg. 9599

Dated April 13, 1973.

WILLIAM D. RUCKELSHAUS,
Administrator,
Environmental Protection Agency.

Part 51 of chapter I, title 40, of the Code of Federal Regulations is proposed to be amended as follows:

1. In § 51.1, paragraph (j) is revised to read as follows:

§ 51.1 Definitions.

* * * * *

(j) "Local agency" means any air pollution control agency, other than the State agency, and any other local governmental agency, which is charged with the responsibility for carrying out a portion of a plan.

* * * * *

2. In § 51.11, paragraph (a)(4) is revised to read as follows:

§ 51.11 Legal authority.

(a) * * *

(4) Prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of the national standard.

* * * * *

3. Section 51.18 is revised to read as follows:

§ 51.18 Review of new sources and modifications.

(a) Each plan shall set forth legally enforceable procedures which shall be adequate to enable the State or a local agency to determine whether the construction or modification of a facility, building, structure, or installation, or

combination thereof, will result in violations of applicable portions of the control strategy or will interfere with attainment or maintenance of a national standard either directly, because of emissions from it, or indirectly, because of emissions resulting from mobile source activities associated with it.

(b) Such procedures shall include means by which the State or local agency responsible for final decision-making on an application for approval to construct or modify can prevent such construction or modification if it will result in a violation of applicable portions of the control strategy or will interfere with the attainment or maintenance of a national standard.

(c) Such procedures shall provide for the submission, by the owner or operator of the building, facility, structure, or installation to be constructed or modified, of such information on the nature and amounts of emissions to be emitted by it or emitted by associated mobile sources, location, design, construction, and operation of such facility, building, structure, or installation as may be necessary to permit the State or local agency to make the determination referred to in paragraph (a) of this section.

(d) Such procedures shall provide that approval of any construction or modification shall not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy.

(e) Each plan shall identify the State or local agency which will be responsible for meeting the requirements of paragraphs (a) and (b) of this section in each area of the State.

(f) Such procedures shall identify types and sizes of facilities, buildings, structures or installations which will be

and/or patrons, and so on.

Data on present air quality, topography, and meteorology also will be necessary.

In those cases where an environmental impact statement (EIS) has been or will be prepared under the National Environmental Policy Act or similar State or local laws, the EIS may well be an adequate basis for making the determinations required by § 51.18. Accordingly, agencies responsible for new source reviews are encouraged to make such use of EIS wherever possible in order to avoid needless duplication of information gathering and analysis. EIS should be useful particularly with respect to highways and airports. In addition, with respect to highways, agencies responsible for new source review pursuant to section 51.18 are encouraged to make use of data gathered and analyses performed pursuant to section 109(j) of the Federal-Aid Highway Act.

3. The use of available modeling techniques for approximating the effects of point, area, and line sources of air pollution is suggested. The following publications describe some of the available techniques:

PROPOSED RULES

(1) Turner, D. B.; "Workbook of Atmospheric Dispersion Estimates," PHS No. 999–AP–26 (1969).

(2) US EPA; "Compilation of Air Pollutant Emission Factors"; OAP No. AP–42 (Feb. 1972).

(3) Briggs, G. A.; "Plume Rise"; TID–25075 (1969), Clearinghouse for Federal Scientific and Technical Information, Springfield, Va. 22151.

(4) Mancuso, R. L. and Lugwig, F. L.; "Users Manual for the APRAC–1A Urban Diffusion Model Computer Program," "Stanford Research Institute Report" prepared for EPA under contract. CPA 3–68 (1–69) (Sept. 1972). Available at Clearinghouse for Federal Scientific and Technical Information, Springfield, Va. 22151.

(5) Zimmerman, J. R. and Thompson, R. S.; "User's Guide for HIWAY," paper under preparation, Met. Lab., EPA, RTP, N.C.

(6) USGRA: "Proceedings of Symposium on Multi-Source Urban Diffusion Models," OAP Publication No. AP–86 (1970).

(7) Air Quality Implementation Planning Program, Volume 1, Operators Manual, PB 198–299 (1970), Clearinghouse for Federal Scientific and Technical Information, Springfield, Va. 22151.

(8) Hanna, S. R.: "Simple Methods of Calculating Dispersion from Urban Area Sources," paper presented at Conference on Air Pollution Meteorology, Raleigh, N.C. (Apr. 1971). Available at Clearinghouse for Federal Scientific and Technical Information, Springfield, Va. 22151.

(9) ASME: "Recommended Guide for the Prediction of Dispersion of Airborne Effluents," United Engineering Center, 345 E. 47th St., N.Y., N.Y. 10017 (1968).

(10) Slade, D. H. (editor): "Meteorology and Atomic Energy 1968," USAEC (1968).

[FR Doc.73–7509 Filed 4–17–73;8:45 am]

Fed. Reg. 17782

(July 3, 1973)

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

NEW JERSEY

Approval and Promulgation of Implementation Plans

Under the Clean Air Act Amendments of 1970, Congress required the states to prepare plans for implementing the national ambient air quality standards promulgated by EPA.

EPA promulgated the ambient standards on April 30, 1971. Pursuant to the statutory timetable established by the Act each state had 9 months in which to develop, adopt, and submit detailed plans for implementation of the ambient standards.

The Governor of New Jersey submitted the State's implementation plan to the Administrator on January 26, 1972. At that time, a 2-year extension was requested in the attainment date of the national standards for photochemical oxidants and carbon monoxide in the New Jersey-New York-Connecticut and Metropolitan Philadelphia Interstate Regions.

On May 31, 1972 (37 FR 10842), pursuant to section 110 of the Clean Air Act and 40 CFR Part 51, the Administrator approved, with specific exceptions, State plans for implementation of the national ambient air quality standards.

On January 31, 1973, the United States Court of Appeals for the District of Columbia Circuit found that the Administrator did not conform to the strict requirements of the Clean Air Act of 1970 in permitting several states to delay

submission of transportation control portions of their implementation plans until February 15, 1973, and in granting a delay until mid-1977 for attainment of the national primary ambient air standard without following the procedures established in section 110(e) 42 U.S.C. § 1857C-5(e). Accordingly, the court ordered that the Administrator rescind the extension granted the states for implementation plans. The affected states were required to submit a control plan by April 15, 1973, that would ensure attainment of the national ambient air quality standards for photochemical oxidants and/or carbon monoxide as expeditiously as practicable but no later than May 31, 1975.

At the time of the January 31, 1973, court ruling, New Jersey had already submitted an approved transportation plan and, therefore, was not contemplating any additional submission on February 15, 1973. Thus, when the new timetable was set by the Court and the requirements of section 110 further clarified, New Jersey found itself unable to meet the procedural requirements by April 15, 1973. Furthermore, it was not until March 29, 1973, that the State of New York for the first time advised New Jersey of the need for significantly larger than anticipated reductions in hydrocarbon emissions in the New Jersey portion of the New Jersey-New York-Connecticut Region in order to provide for the attainment of the national standard for photochemical oxidants in the New York portion of that Region. Thus, on April 16, 1973, the Commissioner of the New Jersey Department of Environmental Protection, acting on behalf of the Governor, submitted a letter to the EPA Regional Administrator advising him of New Jersey's inability to

meet the deadline for plan submittal but assuring him of New Jersey's intent to develop and submit a plan as expeditiously as possible. In this letter the Commissioner listed seven alternative combinations of control strategies that would be considered by the State of New Jersey in order to achieve the national standards for carbon monoxide and photochemical oxidants. The seventh alternative included the following strategies:

1. Compliance with Federal Motor Vehicle Control Program for new vehicles by 1976.

2. Compliance with more restrictive inpsection/maintenance standards that are exepected to reject approximately 45 percent of New Jersey vehicles.

3. Control of stationary sources.

4. Reduction of vehicle miles traveled (VMT) during critical seasons of the year by rationing of gasoline to the extent required to achieve a 67 percent reduction in hydrocarbon emissions. (NOTE: This strategy could be employed singularly, or in combination with any of the above strategies.)

Because of New Jersey's inability to submit transportation control strategies on the deadline imposed by the Court of Appeals, portions of the New Jersey implementation plan were disapproved on June 15, 1973.

In accordance with the requirements of section 110, on this day the Administrator is submitting a proposal for a transportation control plan for the attainment and maintenance of the national primary ambient air quality standard for photochemical oxidants and carbon monoxide in the New Jersey-New York-Connecticut and the Metropolitan Philadelphia Interstate Regions in re-

sponse to the January 31, 1973, Court order.

POLLUTION IN THE NEW JERSEY PORTIONS OF THE NEW JERSEY-NEW YORK CONNECTICUT REGION AND THE METROPOLITAN PHILADELPHIA REGION

The New Jersey portion of the Metropolitan Philadelphia Interstate Region consists of the counties of Burlington, Camden, Gloucester, Mercer, and Salem. The Region is meteorologically and topographically similar consisting, characteristically, of low and generally flat terrain. The population and source density varies greatly throughout the Region ranging from sparsely populated rural areas through mushrooming suburbs to the dense urban core areas surrounding Philadelphia. The highest pollutant concentrations were recorded in the heavily developed western sections of the Region.

The Region is classified priority I with respect to carbon monoxide and photochemical oxidants. The maximum 8-hour carbon monoxide concentrations were recorded in the cities of Trenton and Camden and the maximum 1-hour photochemical oxidant concentrations at the Camden monitoring site in Camden County.

In 1972 there were more than 3,000 violations of the maximum 8-hour carbon monoxide concentration. During the same period the oxidant standard was exceeded three times at the site reporting the highest concentrations.

The New Jersey-New York-Connecticut Region is comprised of the following counties: (1) Bergen, Essex, Hudson, Middlesex Monmouth, Morris, Passaic, Somerset and Union in New Jersey; (2) the five boroughs of New York City, Nassau, Rockland, Suffolk and Westchester Counties in New York State; and

(3) Fairfield County in Connecticut. In addition to meteorological and geographical similarity among these counties, the region contains one of the largest metropolitan areas in the world. This area is characterized by a high density commercial-residential core in New York City and a peripheral complex sprawl of industrial and suburban developments interspersed with numerous urban centers. The similarity of source characteristics throughout the area results in common pollutant problems throughout this Region.

The New Jersey portion of the Region had a population of nearly 5 million people in 1970 and about half as many motor vehicles. The rate of growth of both people and motor vehicles is approximately the same. This extremely high motor vehicle population forms an integral part of the transportation system for people and goods in the Region, since only the more central urban areas have well developed mass transit systems.

From a meteorological standpoint, the high degree of urbanization has been found to cause the development of complex wind circulation systems in the Region, resulting in a significant increase in the intraregional transport of pollutants emitted in the area. This consideration is of particular significance in the case of photochemical oxidants, whose formation generally occurs at a considerable distance downwind from the source of the precursors of the photochemical reaction. It is, therefore, necessary to control such reactants throughout the Region to prevent the formation of photochemical oxidants anywhere in the region.

This Region is classified priority I for all pollutants, including those predominantly associated with motor vehicles

(carbon monoxide, hydrocarbons, and photochemical oxidants). In 1972, the 8-hour average standard for carbon monoxide was exceeded 352 times in Newark, the site with the highest CO concentration in the New Jersey portion of the region. For this same period, the oxidant standard was exceeded 19 times in the site with the highest concentration in New Jersey.

The primary national ambient air quality standard for photochemical oxidants is 160 $\mu g/m^3$ (0.08 ppm), average for a 1-hour period, and for carbon monoxide is 40 $\mu g/m^3$ (35 ppm), average for a 1-hour period and 10 $\mu g/m^3$ (9 ppm), average for a 8-hour period, none of which are to be exceeded more than once per year. These standards, promulgated on April 30, 1971 (36 FR 8186), were judged necessary by the Administrator to protect public health with an adequate margin of safety, as required by the Clean Air Act of 1970.

ANALYSIS OF METHODOLOGY

Because ambient concentrations of carbon monoxide, at any given location, appear to be highly dependent on carbon monoxide emission in the near vicinity, it was decided that a strategy based on the area-wide application of the proportional model would be unjustified. The peak concentrations of CO in the central portions of Newark, Camden and Trenton were obviously caused by problems related to traffic density and traffic flow, which were highly localized in nature. Therefore, an effective strategy to reduce CO concentrations in these cities should appropriately concentrate on obtaining the maximum reductions in carbon monoxide emissions in the central business districts (CBD's) of each city. A tailored control strategy of this

kind requires the analysis of detailed VMT data that are currently not available. Until such time as the data are obtained, it will be necessary to make assumptions about the CBD distribution from data relating to the counties as a whole.

The formation of photochemical oxidants through atmospheric reactions involving reactive hydrocarbons is strongly influenced by atmospheric transport. It has been determined that hydrocarbon emissions during the period 6 a.m. to 9 a.m. play an important role in the formation of peak concentrations of photochemical oxidants shortly before and after noon. This determination leads to the conclusion that, in general, peak concentrations of photochemical oxidants can be expected at distances representing as much as 3 to 6 hours travel time downwind from the source of emissions provided that the other ingredients for the reaction are present. Thus the formation of photochemical oxidants is regional in nature. Any program to provide for significant reductions in the concentrations of photochemical oxidants in a region that is characterized by widespread, significant sources of hydrocarbons will have to be based on obtaining reductions in emissions of hydrocarbons on a region-wide basis.

During the days of high oxidant concentration, the peak values were found during the period 12 noon to 3 p.m. An analysis of near surface wind flow on days when the concentration of photochemical oxidants exceeded the national standard shows an overwhelming preponderance of cases in which the prevailing wind flow was from the southwest or westerly direction. With this prevailing flow, emissions from the New Jersey portion of the region have the

greatest impact in the New York portions of the region particularly in Manhattan, Queens, and Nassau County. Current inventories of hydrocarbon emissions show that 469,000 ton/yr are produced in the New Jersey portion of the region as compared with 401,000 ton/yr in the New York portion of the region. Sources of hydrocarbon emissions in the New Jersey portion of the region can, therefore, be associated with high photochemical oxidant concentrations at the New York State monitor on Welfare Island. Based on these considerations, it will be necessary to reduce hydrocarbon emissions both in the New Jersey and the New York portions of the region by 67 percent in order to achieve the national ambient air quality standard for photochemical oxidants throughout the region.

SUMMARY

Information currently available to the Administrator indicates that reductions of 67 and 17 percent in projected emissions of reactive hydrocarbons are necessary to achieve the national primary ambient air quality standard for photochemical oxidants in 1975 in the New Jersey-New York-Connecticut Region and the Metropolitan Philadelphia Interstate Region, respectively. Reductions of 47 percent, 70 percent and 43 percent are necessary to achieve the National Primary Ambient Air Quality Standard for carbon monoxide in Essex, Mercer, and Camden counties, respectively.

Because the major fraction of reactive hydrocarbon emissions in the New Jersey-New York-Connecticut Region are attributable to motor vehicle emissions, the most effective strategy for achieving reductions in the Region's ambient concentrations must include control

of motor vehicle emissions. The analysis performed by EPA indicated that in addition to stringent controls for limiting emissions of individual motor vehicles, a reduction in vehicle miles traveled (VMT) by gasoline-powered motor vehicles of over 60 percent would have to be effected to achieve the ambient air quality standard for photochemical oxidants in 1975 in the New Jersey portion of the New Jersey-New York-Connecticut Interstate Region. In the Metropolitan Philadelphia Interstate Region a combination of motor vehicle controls and the Federal Motor Vehicle Control Program will achieve the photochemical oxidant standard in 1975. This analysis shows that a reduction in VMT in excess of 35 percent would be necessary in the Mercer County portion of the Metropolitan Philadelphia Interstate Region in order to achieve the ambient air quality standard for carbon monoxide by 1975.

In Camden County, a VMT reduction of 33 percent will be necessary to attain the carbon monoxide standards by 1975. The VMT reduction of 33 percent is not achievable by 1975. Additional hardware strategies were investigated for attainment of the standards by 1975, but all were found to be either non-implementable or inconsistent with the strategies proposed in nearby Mercer County. Therefore, a 1-year extension is granted until 1976 with a total VMT reduction of 27 percent to be achieved by that date. In Essex County, a VMT reduction of 41 percent will be necessary to attain the carbon monoxide standards by 1975 without imposition of retrofit devices on light duty vehicles.

If the standard for photochemical oxidants is to be achieved by 1977, it would require a VMT reduction of 68 percent in the New Jersey portion of the New

Jersey-New York-Connecticut Interstate Region. A VMT reduction of 30 percent by 1977 would be necessary in the Mercer County portion of the Metropolitan Philadelphia Interstate Region to achieve the carbon monoxide standards. Achievement of the photochemical oxidant standard at this time will assure achievement of the carbon monoxide standard in Essex County.

This proposal includes measures for limiting emissions of hydrocarbons from stationary sources to the maximum extent technologically feasible. It also includes stringent controls for limiting emissions of individual motor vehicles. These controls include the Federal Motor Vehicle Control Program for new light duty vehicles, the maintenance of in-use light duty vehicles to achieve specified emissions limitations, the retroft of all pre-1968 light duty vehicles with a relatively inexpensive emissions control device (vacuum spark advance disconnect) by 1975, and the installation of catalytic converters on cars of later model years to the extent that would be technologically and organizationally feasible by 1977.

The inspection and maintenance proposals for New Jersey differ from those EPA is proposing in other regions because the state of New Jersey has already established most of the elements of such a system under state law, leaving only a few portions to be supplemented by Federal promulgation. The inspection and maintenance system established by New Jersey is the most advanced in the nation. The statewide application of these emission limitations on individual vehicles will provide for the achievement of standards for carbon monoxide and photochemical oxidants throughout other portions of the state.

These measures by themselves will not

be sufficient to achieve the standards. Accordingly, the Administrator is also proposing a variety of measures to reduce VMT in the two regions covered by this proposal. In the Philadelphia area, the measures being proposed are a ban on the construction of new parking spaces, and the conversion of selected lanes of major streets and highways to the exclusive use of buses and carpools. In addition, limitations on gasoline consumption are being proposed.

These three measures are also being proposed for the northern New Jersey area. Additional measures being proposed for this region only are a prohibition on daytime deliveries to large commercial establishments by gasoline-powered trucks, a freeze on motorcycle registrations, and a ban on daytime motorcycle operation during the summer months.

The measures being proposed today may be amended, if the comments received in response to this Notice, or EPA's own re-examination of the problem, indicate that such a course would be desirable. All new proposals made in the course of this rule making proceeding will be carefully evaluated before a final promulgation is made.

In each of the cases where regulations have been proposed to limit the use of vehicles or require their emissions per mile to be reduced, the state or city will be required to take steps to accomplish the intended result. If this is not done, penalties for violation of the Clean Air Act may be assessed.

EPA doubts whether it has authority in all cases where it must promulgate portions of an implementation plan to require the state concerned to enforce that promulgation. This is so even though one Circuit Court of Appeals has indicated that such a power does indeed

exist: Natural Resources Defense Council v. EPA, No. 72-1219 (1st Cir. May 2, 1973).

Instead, it is EPA's position that it may require states or cities to enforce regulations that are related to their position as owners of roads. As owners of roads, states and cities may be held directly responsible for the pollution caused by those roads, and by the traffic which the roads make possible, and may be required to take such steps as are necessary to ensure that the roads and the activities carried out on them cease to cause violations of air quality standards. Regulations have accordingly been drafted to impose enforcement responsibility on the states or cities only where the activity being regulated is in the judgment of EPA closely enough related to the government's position as owner of the roads to justify the imposition of responsibility under this theory.

Based on the extent of analysis completed so far, the Administrator has concluded that the approaches proposed today, including the VMT reductions, are the only ones which could be proposed at this time with any confidence that they would provide for the achievement of the ambient air quality standards. Other approaches, some of which may appear less extreme, present problems regarding feasibility and effectiveness of implementation and enforcement. The Administrator emphasizes that further analysis of the problem will be made to determine whether other options are available.

Although the Environmental Protection Agency (EPA) has serious reservations as to the feasibility and desirability of the VMT reductions required to meet the standards in Northern New Jersey by the statutory deadline, the re-

quirements imposed by the Act leave the Administrator with no presently available legal alternative but to propose this plan. It is clear that extreme measures will be necessary here to comply with statutory requirements and that these measures will have a significant socio-economic impact.

The Transportation Control Plan for New York City submitted by New York State on April 17, 1973, contains control strategies which New York will implement in order to achieve the national standards. These strategies included: (1) Motor vehicle emission control, (2) Traffic control and vehicle-use restraints, (3) Mass transit improvements, (4) Goods movement improvements, and (5) Long range planning. The motor vehicle emissions control strategy includes the retrofit of heavy-duty vehicles. The Plan being proposed for the State of New Jersey is considered to be compatible with the New York State plan.

EPA has not proposed retrofit of heavy duty vehicles as part of its proposed New Jersey Plan. Though this strategy is being accepted in the case of New York, the uncertainties in its implementation date are such that EPA does not feel justified in proposing its establishment as a Federal program. If the state of New Jersey wishes to propose it as a state program, in a manner similar to New York's, then it may well be approved provided it is consistent with the New York program.

It is recommended that if the New Jersey Department of Environmental Protection is considering for its plan a measure that requires the retrofit of heavy-duty vehicles, it should actively work with the New York City Bureau of Motor Vehicle Pollution Control. This will provide a greater assurance that an ac-

ceptable device will be available for use in the New Jersey portion of the New Jersey-New York-Connecticut Interstate Region and in the affected New Jersey counties of the Metropolitan Philadelphia Interstate Region.

EXTENSION IN THE ACHIEVEMENT DATE

The January 31, 1973 Court ruling clearly required that a plan be written identifying the strategies that must be applied to demonstrate achievement of the national primary standards for photochemical oxidants and carbon monoxide by 1975. This has been done for the State of New Jersey. It has also been established that certain control strategies cannot be implemented by 1975. It is our judgment that, while certain reductions in VMT will be achievable by 1975 it will require an additional period of at least two years to implement the major portion of the reduction in VMT addressed by this proposal. It has also been determined that retrofit of a significant number of in-use light duty vehicles with catalysts cannot be accomplished before 1977.

CURRENT STUDIES

The Environmental Protection Agency has published the results of an investigation of certain transportation control strategies in "Evaluating Controls to Reduce Motor Vehicle Emissions in Major Metropolitan Area, Final Report", November, 1972. Copies are available from EPA, Air Pollution Technical Information Center, Research Triangle Park, North Carolina 27711. Additional information is contained in the EPA document, "Control Strategies for In-Use Vehicles," November, 1972. This report is available from EPA, Mobile

Source Pollution Control Programs, 401 "M" Streets, S.W., Washington, D.C. 20460.

Specific studies to limit automobile emissions and use in New Jersey are currently being done under EPA contract. The results of these studies were available in April 1973 and were used in the development of the proposed regulations.

PROPOSED CONTROL STRATEGY

The Administrator proposes to require controls on stationary sources, the installation of retrofit devices on light duty vehicles, the inspection of automobiles, and the reduction of VMT.

PROPOSED CONTROLS ON STATIONARY SOURCES

Controls to prevent hydrocarbon emissions will be imposed on a variety of stationary sources. EPA proposes controls on users of solvents in dry cleaning. Vapor recovery systems that prevent evaporation of gasoline into the air will be required for service stations. In addition, emissions from petroleum storage tanks will be controlled as well as from the manufacturing of paints, varnishes, and dyes using photochemically reactive solvents. Should additional stationary source controls prove feasible and desirable, they may be proposed at a later date.

PROPOSED CONTROLS AND MOBILE SOURCES

Due to the substantial contribution of mobile sources to hydrocarbon emissions in the New Jersey portion of the New Jersey-New York-Connecticut Interstate Region (88,432 tons/yr vs. 30,500 tons/yr. from stationary sources) and in the Metropolitan Philadelphia Interstate Region (88,432 tons/yr vs. 30,500 tons/yr from stationary sources), transporta-

tion controls must be imposed in order to achieve enough emission reductions to provide for the achievement of the standards for carbon monoxide and photochemical oxidants. In the case of carbon monoxide, emissions from transportation sources account for greater than 95 percent of the total emissions. Information obtained by the State of New Jersey and EPA during the past year results in estimates of emissions from mobile sources which are significantly different than those contained in the Implementation Plan submitted by New Jersey in January 1972. The difference is attributable to the use of more accurate emission factors that have become available (see "An Interim Report on Motor Vehicle Emission Estimation", Kircher and Armstrong, EPA, October 1972, which is available from the Office of Land Use Planning, EPA, Research Triangle Park, N.C. 27711).

Although the Federal emission standards for new motor vehicles will impose stringent emission limitations on vehicles manufactured in the 1975 and 1976 model years, the reductions obtained will not be adequate to meet the national ambient standards for photochemical oxidants and carbon monoxide in the affected regions of New Jersey by the deadline of May 31, 1977. By that time, no more than 20 percent of the vehicle population will be 1975 or later cars. Accordingly, the emissions reductions measures outlined above for individual vehicles are being proposed.

PROPOSED REDUCTIONS IN VMT

Reducing the emissions per mile of vehicles as outlined above will not be enough to provide for attainment and maintenance of the national standards. In order to meet the requirements of the

Act, limitations must be placed upon the amount of driving done in the affected areas of New Jersey.

As noted above, a VMT reduction of 68 percent will be required in the New Jersey portion of the New York-New Jersey-Connecticut Interstate Region by 1977.

Accordingly, EPA is proposing the VMT reduction measures outlined above for implementation in this area by 1975 or 1977. Certain of the measures are also being proposed for the Philadelphia area.

Other VMT reduction measures, for which no regulatory language has been included, will also be considered as part of this rule-making proceeding. In particular, the advisability of limiting or reducing the number of parking spaces specifically in central business districts or other trip attraction centers, and the feasibility of establishing a more refined bus and carpool transport system by selective conversion of existing streets to their use will be explored. Measures to favor the use of bicycles will also be considered.

The final promulgation may include these other measures not explicitly proposed today if at the time of final promulgation they appear to be the most practicable ways of achieving the standards.

The Administrator is required at this time to propose for promulgation specific measures for reducing the VMT of light-duty vehicles within the New Jersey portion of the New Jersey-New York-Connecticut Interstate Region and within Mercer County which is located in the New Jersey portion of the Metropolitan Philadelphia Interstate Region. Comments are particularly solicited on any other method of VMT reduction that may be less disruptive than those that are being proposed at this time.

All of these measures will not be able to be implemented in full by 1975. However, it should be emphasized that the Clean Air Act requires measures to reduce air pollution which are "reasonably available" by 1975 to be put into effect by that date before an extension of the time for achieving the standards may be granted.

The following tables present a summary of the effect of each element of the proposed strategy for the areas in question. All calculations are based on 1972 air quality data. There is no reason to believe that 1972 was a year of unusually high carbon-monoxide or photochemical oxidant concentration.

COMPILATION OF CONTROL STRATEGY EFFECTS ON MAY 31, 1977—Hydrocarbons

New Jersey Portion of the New Jersey-New York-Connecticut Interstate Region

	Tons Per Year	Percent of Total Reduction Due to Each Control	% Reduction
I. Stationary source emission without control strategy	148,398		
Expected Reductions:			
a. Control of petroleum storage tanks	60,849	19	12.9
b. Control of solvent emissions from dry cleaning	7,167	2	1.5
c. Other stationary source controls	8,229	3	1.8
Stationary emissions remaining	69,150		
II. Aircraft emissions without control strategy	17,575		
Expected Reductions	5,273	2	1.1
Aircraft emissions remaining	12,302		
III. Mobile emissions from on-highway light and heavy duty vehicles and from gasoline marketing operations without control strategy	302,428		
Expected Reductions:			
a. FMVCP	73,674	23	15.7
b. Gasoline marketing vapor control	3,778	1	0.8
c. Inspection and maintenance	18,126	6	3.9
d. Oxidizing catalyst retrofit with VSAD	16,751	5	3.4
e. Oxidizing catalyst retrofit	67,371	21	14.3
f. Reduction in VMT	54,617	18	11.6
Mobile emissions remaining	69,092		
Total Emissions without control strategy	469,901		
Total Reductions	314,834	100	67
Total emissions remaining	155,067		

COMPILATION OF CONTROL STRATEGY EFFECTS ON MAY 31, 1978—Hydrocarbons

New Jersey Portion of the Metropolitan Philadelphia Interstate Region

	Tons Per Year	Percent of Total Reduction Due to Each Control	% Reduction
I. Mobile emissions from on-highway light and heavy duty vehicles and from gasoline marketing operations without control strategy	87,483		
Expected Reduction:			
a. FMVCP	15,883	67	13.4
b. Inspection and Maintenance	5,883	25	4.9
c. Gasoline marketing vapor control	1,100	5	0.9
Mobile Emissions Remaining	64,667		
II. Aircraft emissions without control strategy	1,909		
Expected Reduction	513	3	0.5
Aircraft Emissions Remaining	1,266		
Total Emissions without control strategy	118,932		
Total reductions	23,409	100	19.7
Total Emissions Remaining	95,573		

COMPILATION OF CONTROL STRATEGY EFFECTS ON MAY 31, 1977—CARBON MONOXIDE

Mercer County Portion of the Metropolitan Philadelphia Interstate Region

	Tons Per Year	Percent of Total Reduction Due to Each Control	% Reduction
I. Mobil emmissions from on-highway light and heavy duty vehicles without control strategy	101,812		
Expected Reductions:			
a. FMVCP	41,800	54	38.1
b. Inspection and Maintenance	4,896	7	4.8
c. Oxidizing catalyst retrofit with VSAD	2,912	4	2.7
d. Oxidizing catalyst retrofit	18,967	25	17.3
e. Reduction in VMT	6,447	8	5.9
Mobile Emissions Remaining	26,790		
II. Aircraft emissions without control strategy	5,499		
Expected Reduction	1,650	2	1.5
Aircraft Emissions Remaining	3,849		
Total Emissions without control strategy	109,575		
Total Reduction	76,702	100	70.0
Total Emissions Remaining	32,873		

COMPILATION OF CONTROL STRATEGY EFFECTS ON MAY 31, 1977—Carbon Monoxide

Camden County Portion of the Metropolitan Philadelphia Interstate Region

	Tons Per Year	Percent of Total Reduction Due to Each Control	% Reduction
I. Mobile emissions from on-highway light and heavy duty vehicles without control strategy	131,536		
Expected Reductions:			
a. FMVCP	53,500	87	39.7
b. Inspection and Maintenance	7,804	13	5.8
Mobile Emissions Remaining	70,232		
Total Emissions without control strategy	134,811		
Total Reduction	61,304	100	45.5
Total Emissions Remaining	73,507		

COMPILATION OF CONTROL STRATEGY EFFECTS ON MAY 31, 1977—Carbon Monoxide

Essex County Portion of the New Jersey-New York-Connecticut Interstate Region

	Tons Per Year	Percent of Total Reduction Due to Each Control	% Reduction
I. Mobile emissions from on-highway light and heavy duty vehicles without control strategy	208,671		
Expected Reductions:			
a. FMVCP	61,709	38	27.6
b. Inspection and Maintenance	9,529	6	4.3
c. Oxidizing catalyst retrofit with VSAD	8,236	5	3.7
d. Oxidizing catalyst retrofit	43,875	27	19.7
e. Reductions in VMT	35,735	22	16.0
Mobile Emissions Remaining	49,586		
II. Aircraft emissions without control strategy	9,881		
Expected Reduction	2,917	2	1.3
Aircraft Emissions Remaining	6,917		
Total Emissions without control strategy	223,232		
Expected Reductions	162,049	100	
Total Emissions Remaining	61,173		72.6

Additional technical information is contained in: "Technical Support Document for the Proposed Transportation Control Strategy for the State of New Jersey," available from the Region II Office, Environmental Protection Agency,

Room 847, 26 Federal Plaza, New York, N.Y. 10007.

ECONOMIC AND SOCIAL IMPACT OF THE NEW JERSEY TRANSPORTATION CONTROL PLAN

Congress recognized that achievement of the goals of the Clean Air Act would have a significant impact on many urban areas. A quantitative assessment of the impact of the plan on the economic and social fabric of the community has not been possible due to the lack of time and the innate complexity of the issue. However, we will attempt to describe briefly the types of impacts which might occur. An immediate impact of the adoption of this proposal will be the imposition of direct costs to vehicle owners and operators. A subsequent impact will be derived from the reduction in the mobility of workers and consumers. This interference with the ability of citizens to move as freely as they are now accustomed to move will alter the activity patterns of many people residing in the state. Obviously, the severity of the impact depends on the degree of vehicle use restrictions, on the manner that direct costs of abatement equipment are recovered, and the degree to which the effects can be ameliorated, particularly through the improvement of the mass transit system.

Elements common to all of the mobile source control strategies considered are limited catalytic retrofits of late model cars, an inspection and maintenance program to insure proper functioning of abatement equipment and emission control devices on gasoline marketing equipment.

The Clean Air Act requires all VMT reduction measures which are "reasonably available" to be put into effect by 1975

before an extension to 1977 of the date for achieving the standards may be granted. It is here assumed that VMT reduction measures which would cause significant social and economic disruption cannot be considered as "reasonably available."

Short of significant social and economic disruption, however, it is plain that the authors of the Clean Air Act anticipated that significant changes in life styles might be called for as a way of meeting air quality standards. Although the impact of the kind of VMT reductions that must be considered "reasonably available" on aspects of human welfare other than air quality is hard to assess precisely it is reasonably clear they will create inconvenience in the short run. Those who have been accustomed to driving alone at their own convenience in the assurance of finding a parking space at shopping or recreation areas or to driving alone to and from work when carpools or mass transit are available, will have to modify their previous habits to some degree. Some shorter trips will be shifted from automobiles to other forms of locomotion such as bicycles or walking. Some trips that are more a matter of convenience than necessity will probably not be taken.

In the longer run, there may well be significant positive aspects to voluntary VMT reductions. Many experts believe that the sprawling development patterns fostered by widespread automobile use are unduly wasteful of energy, land, and other resources, and have contributed to the decay of urban centers. More widespread use of other modes of transportation will be necessary if these tendencies are to be arrested. Though to correct these tendencies is not and cannot legally be the purpose of VMT reductions under

the Clean Air Act, they may nevertheless be an essential step in that direction.

No such standard of "reasonable availability" applies to the requirement that the air quality standards must be achieved by 1977. Though of course they should be achieved in the most technically and socially feasible way, the Clean Air Act commands that they must be achieved in any event regardless of economic and social consequences.

It appears that in Northern New Jersey extremely stringent measures may be required to meet this statutory command. The Administrator is concerned about the potential for social disruption this might cause, and will study the situation further to determine whether the standards can be achieved on schedule in a socially and economically feasible way.

EPA Efforts To Mitigate the Effects of Proposed Regulations

The combined effect of these proposed regulations, together with the New Jersey Implementation Plan, will eliminate the danger to human health and welfare that exists in the affected areas from air pollution. They will, however, have a significant economic and social impact. The Administrator will make every effort possible to mitigate the effects of his final promulgation. He will be in contact with the Department of Transportation and other departments as necessary. The Administrator will request that these departments and agencies give special attention to the needs of New Jersey for strategies to reduce VMT, and the needs for mass transit systems to replace the automobile travel eliminated by the proposed controls.

The Need for Mass Transit

The development of large-scale mass

transit facilities in the State is essential to any effort to mitigate the disruptions that can be caused by significant reductions in automobile use. A public transportation system that can absorb the travelers displaced by sizable reductions in gasoline consumption or vehicle miles traveled will have to be considerably more extensive than the system now existing for travel within the State. There exists within the State a comprehensive mass transit system to provide transportation to and from the central business districts of Manhattan and Newark. What is needed, in the State of New Jersey, is a comprehensive mass transit system which will provide transportation for non-work related trips and for work related trips within the State.

The Administrator recognizes that the present low density, sprawling land use pattern in the New Jersey area is not conducive to the efficient use of mass transit. The long-term problems of attaining and maintaining high levels of transit service and use would be considerably eased through the application of public policy measures to promote the centralization and corridorization of activities that generate large demands for transportation.

Proper land use policies would greatly assist the long-term implementation of such emission control measures as VMT reductions.

Public Comments Solicited

Although the Administrator has concluded that the proposed plan is the only approach available to him at the present time that is demonstrably capable of achieving compliance with the requirements of the Act, further analysis may demonstrate that more appropriate options are available. He therefore de-

sires to obtain the comments and suggestions of the public on the problems of achieving the ambient air quality standards in the affected areas of New Jersey. Comments are particularly invited pertaining to measures that may be taken by Federal, State, or local authorities in support of or to supplement the proposed air pollution control strategy for the Regions, means of implementing these measures, and the comparative social and economic effects of alternative pollution control measures.

Public hearings will be held on this and alternative proposals on Monday, July 16, 1973, at 9:00 a.m., in Room 121, Armitage Hall, Rutgers University, Camden, New Jersey; on Tuesday, July 17, 1973, at 9:00 a.m. in the Trenton Auditorium, New Jersey State Museum, 205 West State Street, Trenton, New Jersey; and on Wednesday, July 18, 1973, and, if necessary, on Thursday and Friday, July 19 and 20, 1973, at 9:00 a.m. at the Newark College of Engineering, Room 313, Newark College Engineering Center, 323 High Street, Newark, New Jersey.

The Administrator's final promulgation of transportation control for New Jersey will be greatly influenced by the comments and testimony he receives as well as by the approvable strategies submitted by the State as part of the State plan prior to August 15, 1973. These influences, and the additional analysis of alternative strategies that can be made in the time between this proposal and final promulgation, may lead the Administrator to adopt final regulations that differ in important ways from this proposal.

SUBMITTAL OF WRITTEN COMMENTS

Interested persons may participate in this rule making by submitting written comments, preferably in triplicate, to the

Regional Administrator, EPA Region II, 26 Federal Plaza, New York, New York 10007. Receipt of comments will be acknowledged, but substantive responses to individual comments will not be provided. Comments received will be available for public inspection during normal business hours at the EPA Region II Office, and at locations to be announced in the New Jersey area. This notice of proposed rule making is issued under the authority of section 110(c) and 301(a) of the Clean Air Act (42 U.S.C. 1857 et seq.).

Dated: June 22, 1973.

ROBERT W. FRI,
Acting Administrator.

It is proposed to amend Subpart FF of Part 52 of Chapter 1 of Title 40 of the Code of Federal Regulations as follows:

1. Subpart FF is amended by adding the following sections:

§ 52.1583 Regulation for yearly inspection and maintenance.

(a) Definitions:

(1) "Inspection and maintenance" means a program to reduce emissions from in-use vehicles through identifying vehicles that need emission control related maintenance and requiring that maintenance be performed.

(2) All other terms used in this section which are defined in Appendix N to Part 51 of this subchapter, are used herein with the meanings so defined.

(b) This section is applicable in those sections of Bergen, Passaic, Essex, Hudson, Morris, Union, Somerset, Middlesex, and Monmouth Counties contained within the New Jersey-New York-Connecticut Interstate Air Quality Control Region (AQCR) and counties of Mercer, Burlington, Camden, Gloucester, and

Salem which constitute the New Jersey portion of the Metropolitan Philadelphia Interstate AQCR.

(c) All registered gasoline-powered light-duty vehicles shall be inspected annually for emissions in accordance with the currently established New Jersey program and, as necessary, maintained by the owner in order to pass the inspection.

(d) After January 1, 1975, the following shall apply in the areas described in paragraph (b) of this section:

(1) The State of New Jersey shall not register light-duty vehicles that do not comply with the provisions of paragraph (c) of this section.

(2) No owner of light-duty vehicles shall operate or allow the operation of such vehicles that do not comply with the provisions of paragraph (c) of this section.

§ 52.1584 Vacuum spark advance disconnect retrofit.

(a) Definitions:

(1) The term "vacuum spark advance disconnect" means a device or system installed on the vehicle which prevents the ignition vacuum advance from operating either when the vehicle's transmission is in the lower gears, or when the vehicle is travelling below a predetermined speed.

(2) All other terms used in this section which are defined in Appendix N of Part 51 of this subchapter are used herein with the meanings so defined.

(b) This section is applicable in those sections of Bergen, Passaic, Essex, Hudson, Morris, Union, Somerset, Middlesex, and Monmouth Counties contained within the New Jersey-New York-Connecticut Interstate Air Quality Control

Region and the County of Mercer contained in the Metropolitan Philadelphia Interstate Air Quality Control Region.

(c) The State of New Jersey shall establish a retrofit program to ensure that on or before May 31, 1975, all gasoline powered light-duty vehicles of model years prior to 1968 subject under presently existing legal requirements to registration in the area defined in paragraph (b) above are equipped with an appropriate vacuum spark advance disconnect device. No later than March 1, 1974 the State shall submit legally adopted regulations to EPA establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving such devices for use on vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of paragraph (c)(3) of this section are enforced.

(3) A provision that starting no later than May 31, 1975, no vehicle of which retrofit is required under this section shall pass the annual emissions test provided for by § 52.1583 as a prerequisite to annual registration unless it has been first equipped with an approved vacuum spark advance disconnect retrofit which the test has shown to be installed and operating correctly. The regulations shall include test procedures and failure criteria for implementing this provision.

(4) A method and proposed procedures for ensuring that those installing the retrofits have the training and ability to perform the needed tasks satisfactorily and will have an adequate supply of retrofit components.

(d) After May 31, 1975, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicle which does not comply with the applicable standards and procedures implementing this section.

(e) The State of New Jersey shall submit, no later than October 1, 1973, a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to paragraph (c) of this section, including the text of needed statutory proposals and needed regulations which it will propose for adoption. The compliance schedule shall also include a date by which the State shall evaluate and approve devices for use in this program. Such date shall be no later than September 30, 1974.

(f) Failure to comply with any provision of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. The state will be considered to have failed to comply with the requirements of this section if it fails to timely submit the required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.1585 Oxidizing catalyst retrofit.

(a) Definitions:

(1) "Oxidizing catalyst" means a device installed in the exhaust system of the vehicle that utilizes a catalyst and, if necessary, an air pump to reduce emissions of hydrocarbons and carbon monoxide from that vehicle.

(2) All other terms used in this section which are defined in Appendix N to

part 51 of this subchapter, are used herein with the meanings so defined.

(b) This section is applicable in those sections of Bergen, Passaic, Essex, Hudson, Morris, Union, Somerset, Middlesex, and Monmouth Counties contained within the New Jersey-New York-Connecticut Interstate Air Quality Control Region and the County of Mercer contained within the Metropolitan Philadelphia Interstate Air Quality Control Region of New Jersey.

(c) The State of New Jersey shall establish a retrofit program to ensure that on or before May 1, 1977, certain gasoline powered light-duty vehicles of model years 1965 through 1974 subject under presently existing legal requirements to registration in the area defined in paragraph (b) above are equipped with an appropriate oxidizing catalyst retrofit device. No later than March 1, 1974, the state shall submit legally adopted regulations to EPA establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving such devices for use on vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of paragraph (c)(3) of this section are enforced.

(3) A provision that starting no later than May 31, 1976, the State of California shall require those light-duty vehicles of 1974 model year and earlier which are able to operate on 91 RON gasoline, to be retrofitted with an oxidizing catalytic converter.

(4) A method and proposed procedures for ensuring that those installing the retrofits have the training and ability to perform the needed tasks satisfactorily and will have an adequate supply of retrofit components.

(d) After May 1, 1977, the State shall not register or allow to operate on its streets or highways any light duty vehicle which does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section.

(e) After May 1, 1977, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicle which does not comply with the applicable standards and procedures implementing this section.

(f) The State of New Jersey shall submit, no later than October 1, 1973, a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to paragraph (c) of this section, including the text of needed statutory proposals and needed regulations which it will propose for adoption. The compliance schedule shall also include a date by which the State shall evaluate and approve devices for use in this program. Such date shall be no later than September 30, 1975.

(g) Failure to comply with any provisions of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. A state will be considered to have failed to comply with the requirements of this section if it fails to timely submit the required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.1586 Daylight delivery ban regulation.

(a) Definitions:

(1) "Daylight hours" means the hours

between 7 a.m. and 6 p.m. Monday through Saturday.

(2) "Delivery ban" means a program to reduce emissions from in-use heavy duty gasoline powered vehicles employed to deliver goods during daylight hours.

(3) "Heavy duty gasoline powered vehicle" means any motor vehicle designated primarily for transportation of property and rated at more than 6,000 pounds GVW which is powered by a gasoline burning engine.

(4) All other terms used in this section which are defined in Part 51 of this subchapter are used herein with the meaning so defined.

(b) This section is applicable in those portions of Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Passaic, Somerset, and Union counties which make up the New Jersey portion of the New Jersey-New York-Connecticut Interstate Air Quality Control Region.

(c) Beginning January 1, 1975, the State of New Jersey, the counties described in paragraph (b) of this section and any incorporated communities located within these counties shall prohibit during daylight hours deliveries of goods to commercial establishments employing 10 or more persons on the streets or highways over which it has ownership or control. The prohibition shall state that heavy duty gasoline powered vehicles making deliveries in violation of the prohibition shall either be towed away, or the owner and/or operator subject to a fine of up to $100 or both.

(d) The State of New Jersey, counties and incorporated municipalities subject to this section shall submit, no later than July 1, 1974, detailed compliance schedules showing the steps they will take to establish and enforce a daylight hours delivery ban program including the stat-

utory proposals and needed regulations which they will propose for adoption. The compliance schedule shall include the date by which the governmental entities will recommend needed legislation to the appropriate body and will identify the State, county, or city officer responsible for enforcement.

(c) Failure to comply with any provision of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under Section 113 of the Clean Air Act. A state or other governmental entity will be considered to have failed to comply with the requirements of this section if it fails to timely submit any required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.1587 Motorcycle limitation program.

(a) Definitions:

(1) "Motorcycle" means any self-propelled two or three wheeled motor vehicle capable of carrying one or more persons.

(2) "Four Stroke Engine" means an internal combustion engine which requires four strokes of the engine's pistons for a complete cycle of operation.

(3) "Two Stroke Engine" means an internal combustion engine which requires two strokes of the engine's pistons for a complete cycle of operation.

(4) "Registration" means the action of a State allowing a vehicle to be operated on the streets and highways in that State during a defined period of time.

(5) "Registration Period" means that period of time for which a vehicle is allowed to be used within the State.

(b) This section is applicable in the New Jersey portion of the New Jersey-New York-Connecticut Interstate Air Quality Control Region.

(c) As of January 1, 1974, or any registration period which commences during the calendar year 1974, the State of New Jersey shall not register in its portion of the New Jersey-New York-Connecticut Interstate Air Quality Control Region more motorcycles than the total number registered in 1973.

(d) As of May 1, 1974, the State of New Jersey shall prohibit the operation of two stroke motorcycles in its portion of the New Jersey-New York-Connecticut Interstate Air Quality Control Region between 6:00 a.m. and 8:00 p.m. during the months of May, June, July, August, and September.

(e) After January 1, 1974, no person shall operate any motorcycle on the streets and highways of the State within the New Jersey portion of the New Jersey-New York-Connecticut Interstate Air Quality Control Region which is not validly registered by the State of New Jersey or by another state.

(f) No later than October 1, 1973, the State shall submit a detailed compliance schedule showing steps it will take to implement and enforce these requirements, including the text of needed statutory proposals and needed regulations which it will propose for adoption. Each schedule shall also include the following:

(1) A date by which the State will adopt procedures necessary to limit the number of motorcycles registered as required above, to restrict the operation of two stroke motorcycles as required above and to require the registration of all motorcycles operated as required above.

(2) Proposed procedures to ensure that no motorcycle will be registered by the

State in a county other than that of the owner's legal residence.

(3) A date by which such procedures will go into effect. Such date shall be no later than January 1, 1974.

(g) Failure to comply with any provision of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under Section 113 of the Clean Air Act. As to compliance schedules, the State will be considered to have failed to comply with the requirements of this section if it fails to timely submit any required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.1588 Gas limitation regulations.

(a) Definitions:

(1) "Base year" means the consecutive twelve month period commencing on July 1, 1972, and ending June 30, 1973.

(2) "Distributor" means any corporation, partnership, or sole proprietorship which transports or stores or causes the transportation or storage of gasoline between any refinery and any retail outlet.

(3) "Retail outlet" means any establishment at which gasoline is sold or offered for sale to the public or introduced into any vehicle.

(b) This section is applicable in those sections of Bergen, Passaic, Essex, Hudson, Morris, Union, Somerset, Middlesex, and Monmouth Counties contained within the New Jersey-New York-Connecticut Interstate Air Quality Control Region (AQCR) and the counties of Mercer, Burlington, Camden, Gloucester, and Salem contained within the Metropolitan Philadelphia Interstate AQCR in the State of New Jersey (hereinafter the "af-

fected areas"), to all distributors who transport gasoline to any retail outlet in this area, and to the owners of all retail outlets in this area.

(c)(1) Beginning July 1, 1974, the State of New Jersey shall implement regulations limiting the total gallonage delivered to retail outlets in the AQCR to the amount delivered to such outlets during the base year.

(2) Beginning May 31, 1977, the State of New Jersey shall implement regulations limiting the total gallonage delivered to retail outlets to that amount which, when combusted, will not result in the ambient air quality standard being exceeded. The state shall by January 1, 1977, submit to the Administrator regulations to accomplish this limitation and specifying the amount of limitation necessary.

(d) In order for the State to determine the amount of gasoline delivered during the base year and each year in which control is in effect, all distributors to which this section applies shall provide the State with a detailed accounting of the amount of gasoline delivered to each retail outlet in the applicable areas during the base year and each year during which the control is in effect. For each year during which control is in effect, the owner of each retail outlet to which this paragraph applies shall provide the State with a detailed accounting of gasoline received from each distributor, the total amount of gasoline sold during the year, and the amount of gasoline on hand at the beginning and end of the year. The State may require any other reports it may deem necessary for the implementation of this section.

(e) The State of New Jersey shall submit no later than October 1, 1973, a detailed compliance schedule showing steps

it will take to establish and enforce the limitation program specified in paragraphs (c)(1) and (d) of this section, including the text of needed statutory proposals and needed regulations which it will propose for adoption. Each schedule shall also include the following:

(1) A date by which the State shall adopt procedures to ensure that no more than the amount of gasoline specified in paragraph (c)(1) of this section is delivered to retail outlets in the affected areas. Such date shall be no later than March 30, 1974.

(2) A date by which any report necessary for establishing such procedures shall be furnished to the State by the distributors. Such date shall be no later than January 1, 1974.

(3) An agency responsible for implementation and monitoring of this program.

(f) Failure to comply with any provision of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under Section 113 of the Clean Air Act. As to compliance schedules, a state will be considered to have failed to comply with the regulations of this section if it fails to timely submit any required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.1589 Preferential bus/carpool treatment.

(a) Definitions:

(1) "Carpool" means a vehicle containing three or more persons.

(2) "Bus/carpool lane" means a motor vehicle lane on a street or highway open only to buses (or buses and carpools), whether constructed specially for that

purpose or converted from existing lanes.

(3) "Major street or highway" means any street or highway which meets the criteria given in paragraph (b)(4) (ii) and (iii) of this section.

(b) The following provisions apply to all areas within the New Jersey portion of the New Jersey-New York-Connecticut Interstate Air Quality Control Region and for Mercer County in the New Jersey portion of the Metropolitan Philadelphia Interstate Air Quality Control Region (hereinafter the "affected areas").

(1) Each incorporated city within the New Jersey portion of the New Jersey-New York-Connecticut Interstate Region and within Mercer County shall establish bus/carpool lanes on the major streets and highways over which it has ownership or control, beginning on December 1, 1973.

(2) Each county within the affected areas shall establish bus/carpool lanes on the major streets and highways over which it has ownership or control, beginning on December 1, 1973.

(3) The State of New Jersey shall establish bus/carpool lanes on the major streets and highways within the affected areas over which it has ownership or control, beginning December 1, 1973.

(4) Each of the governmental entities named in the previous three subparagraphs shall submit, no later than October 1, 1973, a detailed compliance schedule showing the steps which it will take to establish these bus/carpool lanes and enforce the limitations on their use, with each schedule to include the following:

(i) Each street and highway which will have bus/carpool lanes must be identified with a schedule for the establishment of the lanes.

(ii) If a street or highway has four or more motor vehicle traffic lanes in one direction, at least one of these lanes must be open only to buses (or buses and carpools) at all times. If only one lane is open to buses (or buses and carpools) at all times, a second lane must be open only to buses (or buses and carpools) from 6:30 a.m. to 9:30 a.m. and from 3:30 p.m. to 6:30 p.m.

(iii) If a street or highway has three motor vehicle lanes in one direction, at least one of these lanes must be open only to buses (or buses and carpools) from 6:30 a.m. to 9:30 a.m. and from 3:30 p.m. to 6:30 p.m.

(iv) In unusual situations, a street or highway, or motor vehicle lane or segment thereof, may be exempt from these requirements if an approval of the exemption is obtained from the Administrator. The application for exemption shall not be submitted and will not be accepted after September 1, 1973. Special circumstances justifying the need for an exemption or modification (such as inappropriateness of use by buses or desire to allow bus/carpool lanes to be entered briefly by other vehicles for the purpose of crossing a lane or making a right turn) must be given in detail with the application.

(v) Bus/carpool lanes must be prominently indicated by overhead signs at least once every mile, and at each intersection or entry ramp. Twenty-five percent of the lanes for each of the governmental entities must be established and needed signs must be installed by March 1, 1974; fifty percent by June 1, 1974; seventy-five percent by September 1, 1974; one hundred percent by December 1, 1974.

(vi) Bus/carpool lanes must be prominently indicated by distinctive painted

lines, pylons, or physical barriers.

(5) Buses shall have the right of way whenever changing lanes on streets and highways with bus lanes. This shall take effect as each lane is established and identified.

(6) Buses shall be permitted to make left turns (except when a one-way street would be entered from the wrong direction). This shall take effect January 1, 1974.

(7) None of the governmental entities named in this paragraph (b) shall convert existing on-street parking spaces to use as traffic lanes unless the effect will be to increase the number of bus/carpool lanes on the affected street beyond the number otherwise required by this paragraph (b).

(8) A signed statement by the chief executive officer of each governmental entity or his designee shall be submitted to EPA on October 1, 1973, to identify the source and amount of funds for all actions required by this section.

(c) Failure to comply with any provision of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under Section 113 of the Clean Air Act. As to compliance schedules, a governmental entity will be considered to have failed to comply with the requirements of this section if it fails to timely submit any required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.1590 Management of parking supply.

(a) Definitions:

(1) "Construction" means fabrication,

erection, or installation of a parking facility, or any conversion of land to use as a facility.

(2) "Modification" means any change to a parking facility which increases the motor vehicle capacity of such facility.

(3) "Enlargement" means any physical change or addition to a parking facility which increases the motor vehicle capacity of such facility.

(4) "Commenced" means the date on which an owner or operator and a contractor to, or affiliate of such owner or operator, enter into a binding agreement or contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or enlargement.

(5) Parking facility (also called "facility") means any facility, building, structure, or lot or portion thereof used primarily for temporary storage of motor vehicles.

(b) This regulation is applicable in all areas within the New Jersey portion of the New Jersey-New York-Connecticut Interstate Region and in Mercer County in the New Jersey portion of the Metropolitan Philadelphia Interstate Region.

(c) No person, after the date of this proposed regulation, shall commence construction of any new parking facility or modify or enlarge any existing parking facility until he has first received from the Administrator or from an agency approved by the Administrator a permit stating that construction, modification, or enlargement of such facility will not interfere with the attainment of maintenance of applicable Federal Air Quality Standards.

(d) In order for any agency to be approved by the Administrator for purposes of issuing permits for construction

of any new parking facility or any modification or enlargement of any existing parking facility such agency shall demonstrate to the satisfaction of the Administrator that:

(1) Requirements for permit applications and issuance have been established. Such requirements shall include but not be limited to a requirement that before a permit may be issued, the following findings of fact or factually supported projections must be made:

(i) the location of the proposed facility.

(ii) the total motor vehicle capacity of the proposed facility.

(iii) the normal hours of operation of the proposed facility and the enterprises and activities which it serves.

(iv) the number of people using or engaging in any enterprises or activities which the proposed facility will serve.

(v) the number of motor vehicles using the proposed facility on an average hourly basis and a peak hour basis.

(vi) a projection of the geographic areas in the community from which people and vehicles will be drawn to the proposed facility. Such projections shall include data concerning the availability of public transit from such areas.

(2) Criteria for issuance of permits have been established and published. Such criteria shall include but not be limited to:

(i) full consideration of all facts contained in the application.

(ii) provisions that no permit shall be issued if such permit will result in the increase of VMT within any area the air quality of which fails to meet applicable federal air quality standards.

(3) Agency procedures provide that no permit for the construction, enlargement or modification of a facility covered by this section shall be issued without notice

and opportunity for public hearing. The public hearing may be of the legislative type; the notice shall conform to the requirements of § 51.4(b) of this subchapter; and the agency rules of procedure may provide that if no notice of intent to participate in the hearing is received from any member of the public (other than the applicant) prior to seven days before the scheduled hearing date, no hearing need be held. Such a requirement, if imposed, shall be noted prominently in the required notice of hearing.

§ 52.1591 Volatile organic compound loading facilities.

(a) This section is applicable in those portions of Bergen, Passaic, Essex, Hudson, Morris, Union, Somerset, Middlesex, and Monmouth Counties contained within the New Jersey-New York-Connecticut Interstate Air Quality Control Region in the State of New Jersey. Compliance with paragraph (b) of this section shall be in accordance with the provisions of § 52.1590.

(b) No person shall load or allow the loading of volatile organic compounds having a vapor pressure of 1.5 pounds per square inch absolute or greater, under actual storage conditions, into any tank truck or trailer, railroad tank car, locomotive, aircraft, or stationary storage tank with a capacity greater than 5 gallons from any loading facility unless such tank or loading facility is equipped with a vapor collection and disposal system, or its equivalent, properly installed, in good working order, and in operation. Loading shall be accomplished in such a manner that all displaced vapor and air will be vented only to the vapor disposal system.

A means shall be provided to prevent liquid organic compound drainage from

the loading device when it is removed from the hatch, or to accomplish complete drainage before such removal. The vapor disposal portion of the system shall consist of one of the following:

(1) An absorber system or condensation system with a minimum recovery efficiency of 90 percent by weight of all the volatile organic compound vapors and gases entering such disposal system.

(2) A vapor handling system that directs all vapors to a fuel gas system.

(3) Other equipment of at least 90 percent efficiency, provided plans for such equipment are submitted to the Administrator for approval as part of the submission required by § 52.1581(a)(1).

Intermediate storage vessels may be used prior to disposal of vapors under paragraph (b) (1), (2), or (3) of this section provided they are so designed as to prevent release of vapors at any time during use.

§ 52.1592 Control of dry cleaning solvent evaporation.

(a) For the purposes of this section: "Drycleaning operation" means that process by which an organic solvent is used in the commercial cleaning of garments and other fabric material.

(b) This section is applicable in those portions of Bergen, Passaic, Essex, Hudson, Morris, Union, Somerset, Middlesex and Monmouth Counties contained within the New Jersey-New York-Connecticut Interstate Air Quality Conrtol Region (AQCR) in the State of New Jersey.

(c) No person shall operate a drycleaning operation unless the uncontrolled organic emissions from such operation have been reduced at least 85 percent, except that drycleaning opera-

tions emitting less than 3 pounds per hour and less than 15 pounds per day of uncontrolled organic materials are exempt from the requirements of this section.

(d) If incineration is used as a control technique, 90 percent or more of the carbon in the organic compounds being incinerated must be oxidized to carbon dioxide. Compliance with this requirement shall be in accordance with the provisions of § 52.1599.

(e) Any owner or operator of a stationary source subject to this section shall achieve compliance with the requirements of paragraph (c) of this section by discontinuing the use of photochemically reactive solvents as defined by § 52.1594(b) no later than January 31, 1974, or by controlling emissions in accordance with the requirements of § 52.1599.

§ 52.1593 Degreasing Operations.

(a) Definitions. "Degreasing" means the operation of using an organic solvent as a surface cleaning agent prior to fabricating, surface coating, electroplating, or any other process.

(b) This section is applicable in those portions of Bergen, Passaic, Essex, Hudson, Morris, Union, Somerset, Middlesex, and Monmouth Counties contained within the New Jersey-New York-Connecticut Interstate Air Quality Control Region (AQCR) in the State of New Jersey.

(c) No person shall use trichloroethylene (TCE) degreaser as a degreasing solvent after January 31, 1974.

§ 52.1594 Organic solvent usage.

(a) This section is applicable in those portions of Bergen, Passaic, Essex, Hudson, Morris, Union, Somerset, Middlesex, and Monmouth Counties contained

within the New Jersey-New York-Connecticut Interstate Air Quality Control Region in the State of New Jersey. Compliance with the requirements of paragraphs (b) through (l) of this section shall be in accordance with the provisions of § 52.1599.

(b) A person shall not discharge more than 15 pounds of organic materials into the atmosphere in any one day from any article, machine, equipment or other contrivance in which any organic solvent or any material containing organic solvent comes into contact with flame or is baked, heat-cured or heat polymerized, in the presence of oxygen, unless all organic materials discharged from such article, machine, equipment or other contrivance have been reduced either by at least 85 percent overall or to not more than 15 pounds in any one day.

(c) A person shall not discharge more than 40 pounds of organic material into the atmosphere in any one day from any article, machine, equipment or other contrivance used under conditions other than described in paragraph (b) of this section for employing, applying, evaporating or drying any photochemically reactive solvent, as defined in paragraph (l) of this section, or material containing such solvent, unless all organic materials discharged from such article, machine, equipment or other contrivance have been reduced either by at least 85 percent overall or to not more than 40 pounds in any one day.

(d) Any series of articles, machine, equipment or other contrivance designed for processing a continuously moving sheet, web, strip or wire which is subjected to any combination of operations described in paragraphs (b) or (c) of

this section involving any photochemically reactive solvent, as defined in paragraph (l) of this section, or material containing such solvent, shall be subject to compliance with paragraph (c) of this section. Where only non-photochemically reactive solvents or material containing only non-photochemically reactive solvents are employed or applied, and where any portion or portions of said series of articles, machines, equipment or other contrivances involves operations described in paragraph (b) of this section, said portions shall be collectively subject to compliance with paragraph (b) of this section.

(e) Emissions of organic materials to the atmosphere from the cleanup with photochemically reactive solvent, as defined in paragraph (l) of this section, of any article, machine, equipment or other contrivance described in paragraphs (b), (c) or (d) of this section shall be included with the other emissions of organic materials from that article, machine, equipment or other contrivance for determining compliance with this rule.

(f) Emissions of organic materials to the atmosphere as a result of spontaneously continuing drying of products for the first 12 hours after their removal from any article, machine, equipment or other contrivance described in paragraphs (b), (c), or (d) of this section shall be included with other emissions of organic materials from that article, machine, equipment or other contrivance for determining compliance with this rule.

(g) Emissions of organic materials into the atmosphere required to be controlled by paragraphs (b), (c), or (d) of this section shall be reduced by:

(1) Incineration, provided that 90 percent or more of the carbon in the organic material being incinerated is oxidized to carbon dioxide, or

(2) Adsorption, or

(3) Processing in a manner determined by the Administrator to be not less effective than the methods described in paragraph (g) (1) or (2) of this section.

(h) A person incinerating, adsorbing, or otherwise processing organic materials pursuant to this section shall provide, properly install and maintain in calibration, in good working order and in operation devices as specified in the authority to construct or the permit to operate, or as specified by the Administrator, for indicating temperatures, pressures, rates of flow or other operating conditions necessary to determine the degree and effectiveness of air pollution control.

(i) Any person using organic solvents or any materials containing organic solvents shall supply the Administrator, upon request and in the manner and form prescribed by him, written evidence of the chemical composition, physical properties and amount consumed for each organic solvent used.

(j) The provisions of this section shall not apply to:

(1) The manufacture of organic solvents, or the transport or storage of organic solvents or materials containing organic solvents.

(2) The spraying or other employment of insecticides, pesticides or herbicides.

(3) The employment, application, evaporation or drying of saturated halogenated hydrocarbons or perchloroethylene.

(4) The use of any material, in any ar-

ticle, machine, equipment or other contrivance described in paragraphs, (b), (c), (d), or (e) of this section, if:

(i) The volatile content of such material consists only of water and organic solvents, and

(ii) The organic solvents comprise not more than 20 percent by volume of said volatile content, and

(iii) The volatile content is not photochemically reactive as defined in paragraph (l) of this section, and

(iv) The organic solvent or any material containing organic solvent does not come into contact with flame.

(5) The use of any material, in any article, machine, equipment or other contrivance described in paragraphs (b), (c), (d) or (e) of this section, if:

(i) The organic solvent content of such material does not exceed 20 percent by volume of said material, and

(ii) The volatile content is not photochemically reactive as defined in paragraph (l) of this section, and

(iii) More than 50 percent by volume of such volatile material is evaporated before entering a chamber heated above ambient application temperature, and

(iv) The organic solvent or any material containing organic solvent does not come into contact with flame.

(6) The use of any material, in any article, machine, equipment or other contrivance described in paragraphs (b), (c), (d), or (e) of this section, if:

(i) The organic solvent content of such material does not exceed 5 percent by volume of said material, and

(ii) The volatile content is not photochemically reactive as defined in paragraph (l) of this section, and

(iii) The organic solvent or any material containing organic solvent does not come into contact with flame.

(k) For the purposes of this section, organic solvents include diluents and thinners and are defined as organic materials which are liquids at standard conditions and which are used as dissolvers, viscosity reducers or cleaning agents.

(l) For the purpose of this section, a photochemically reactive solvent is any solvent with an aggregate of more than 20 percent of its total volume composed of the chemical compounds classified below or which exceeds any of the following individual percentage composition limitations, referred to the total volume of solvent:

(1) A combination of hydrocarbons, alcohols, aldehydes, esters, ethers or ketones having an olefinic or cyclo-olefinic type of unsaturation: 5 percent;

(2) A combination of aromatic compounds with eight or more carbon atoms to the molecule except ethylbenzene: 8 percent

(3) A combination of ethylbenzene, ketones having branched hydorcarbon structures, trichloroethylene or toluene: 20 percent.

Whenever any organic solvent or any constituent of an organic solvent may be classified from its chemical structure into more than one of the above groups of organic compounds, it shall be considered as a member of the most reactive chemical group, that is, that group having the least allowable percent of the total volume of solvents.

(m) For the purpose of this section, organic materials are defined as chemical compounds of carbon excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, metallic carbonates and ammonium carbonate.

(n) This section shall be effective on the date of its adoption as to any article,

machine, equipment or other contrivance not then completed and put into service. As to all other articles, machines, equipment or other contrivances, this section shall be effective in accordance with § 52.1599.

§ 52.1595 Storage of petroleum products.

(a) This section is applicable in those portions of Bergen, Passaic, Essex, Hudson, Morris, Union, Somerset, Middlesex and Monmouth Counties contained within the New Jersey-New York-Connecticut Interstate Air Quality Control Region in the State of New Jersey. Compliance with the requirements of paragraph (b) of this section shall be in accordance with the provisions of § 52.1598.

(b) A person shall not place, store or hold in any stationary tank, reservoir or other container of more than 40,000 gallons capacity any gasoline or any petroleum distillate having a vapor pressure of 1.5 pounds per square inch absolute or greater under actual storage conditions, unless such tank, reservoir or other container is a pressure tank maintaining working pressures sufficient at all times to prevent hydrocarbon vapor or gas loss to the atmosphere, or is designed and equipped with one of the following vapor loss control devices, properly installed, in good working order and in operation:

(1) A floating roof, consisting of a pontoon type or double deck type roof, resting on the surface of the liquid contents and equipped with a closure seal, or seals, to close the space between the roof edge and tank wall. The control equipment provided for in this paragraph shall not be used if the gasoline or petroleum distillate has a vapor pressure of 11.0 pounds per square inch absolute or greater under actual storage conditions. All tank gauging and sampling de-

vices shall be gas-tight except when gauging or sampling is taking place.

(2) A vapor recovery system, consisting of vapor gathering system capable of collecting the hydrocarbon vapors and gases discharged and a vapor disposal system capable of processing such hydrocarbon vapors and gases so as to prevent their emission to the atmosphere and with all tank gauging and sampling devices gas-tight, except when gauging or sampling is taking place.

(3) Other equipment of equal efficiency, provided such equipment is submitted to and approved by the Administrator.

§ 52.1596 Gasoline loading into tank trucks and trailers.

(a) This section is applicable in those portions of Bergen, Passaic, Essex, Hudson, Morris, Union, Somerset, Middlesex and Monmouth Counties contained within the New Jersey-New York-Connecticut Interstate Air Quality Control Region and the Counties of Mercer, Burlington, Gloucester, Salem, and Camden contained within the Metropolitan Philadelphia Air Quality Control Region in the State of New Jersey. Compliance with the requirements of paragraph (b) of this section shall be in accordance with the provision of § 52.1599.

(b) A person shall not load gasoline into any tank truck or trailer from any loading facility unless such loading facility is equipped with a vapor collection and disposal system or its equivalent, properly installed, in good working order and in operation. When loading is effected through the hatches of a tank truck or trailer with a loading arm equipped with a vapor collection adaptor, a pneumatic, hydraulic or other mechanical means shall be provided to force a vapor-tight seal between the adapter and

the hatch. A means shall be provided to prevent liquid gasoline drainage from the loading device when it is removed from the hatch of any tank truck or trailer, or to accomplish complete drainage before such removal. When loading is effected through means other than hatches, all loading and vapor lines shall be equipped with fittings which make vapor-tight connections and which close automatically when disconnected. The vapor disposal portion of the system shall consist of one of the following:

(1) A vapor/liquid absorber system with a minimum recovery efficiency of 90 percent by weight of all the hydrocarbon vapors and gases entering such disposal system.

(2) A variable vapor space tank, compressor, and fuel gas system of sufficient capacity to receive all hydrocarbon vapors and gases displaced from the tank trucks and trailers being loaded.

(3) Other equipment of at least 90 percent efficiency, provided such equipment is submitted to and approved by the Administrator.

§ 52.1597 Gasoline loading into tanks.

(a) This section is applicable in those portions of Bergen, Passaic, Essex, Hudson, Morris, Union, Somerset, Middlesex and Monmouth Counties contained within the New Jersey-New York-Connecticut Interstate Air Quality Control Region and the Counties of Mercer, Burlington, Gloucester, Salem, and Camden contained within the Metropolitan Philadelphia Interstate Air Quality Control Region in the State of New Jersey. Compliance with the requirements of paragraph (b) of this section shall be in accordance with the provisions of § 52.1599.

(b) (1) A person shall not load or permit the loading of gasoline into any tank

truck or trailer, except through a permanent submerged fill pipe, unless such tank is equipped with a vapor loss control device or a pressure tank as described in § 52.1596(b). The provisions of this subparagraph shall not apply to the loading of gasoline into any tank having a capacity of less than 2,000 gallons which was installed prior to the date of adoption of this section nor to any underground tank installed prior to the date of adoption of this section where the fill line between the fill connection and tank is offset.

(2) Any person operating or using any gasoline tank with a capacity of 250 gallons or more installed prior to the date of adoption of this section shall apply for a permit to operate such tank. A person shall not install any gasoline tank with a capacity of 250 gallons or more unless such tank is equipped as described in paragraph (b) (1) of this section.

(c) Definitions. (1) For the purpose of this section, the term "gasoline" is defined as any petroleum distillate having a Reid vapor pressure of 4 pounds or greater.

(2) For the purpose of this section, the term "submerged fill pipe" is defined as any fill pipe the discharge opening of which is entirely submerged when the liquid level is 6 inches above the bottom of the tank. "Submerged fill pipe" when applied to a tank which is loaded from the side is defined as any fill pipe the discharge opening of which is entirely submerged when the liquid level is 18 inches above the bottom of the tank.

(3) The provisions of this section do not apply to any stationary tank which is used primarily for the fueling of implements of husbandry.

§ 52.1598 Paint and varnish manufacturing.

(a) This section is applicable in those portions of Bergen, Passaic, Essex, Hudson, Morris, Union, Somerset, Middlesex and Monmouth counties contained within the New Jersey-New York-Connecticut Interstate Air Quality Control Region in the State of New Jersey. Except as provided in paragraph (b)(1) of this section, compliance with paragraphs (b) and (c) of this section shall be in accordance with the provision of § 52.1599.

(b) All persons engaged in the manufacturing of paints shall fulfill one of the following requirements:

(1) Reformulate paint to replace a photochemically reactive solvent with a non-photochemically reactive solvent by January 31, 1974.

(2) Produce water-base coatings.

(3) Condense and absorb by scrubbing with alkali or acid washes.

(4) Scrub and adsorb by activated charcoal or other adsorbants.

(5) Combust organic emissions.

(c) Any manufacturer engaged in the production of varnish shall not engage in such activity unless the manufacturer fulfills the following requirements:

(1) Remove copal vapors through installation of a condensation unit which has been approved by the Administrator.

(2) Remove varnish vapors through installation of a combustion unit which has been approved by the Administrator.

§ 52.1599 Federal compliance schedules.

(a) Except as provided in paragraph (c) of this section, the owner or operator of any stationary source subject to the requirements of §§ 52.1591, 52.1592, 52.1593, 52.1594, 52.1595, 52.1596, 52.1597, 52.1598 shall comply with the compliance schedule in paragraph (b) of this section.

(b) Compliance Schedule. (1) September 17, 1973. Submit to the Administrator a final control plan, which describes at a minimum the steps which will be taken by the source to achieve compliance with the regulations cited in paragraph (a) of this section.

(2) November 16, 1973. Negotiate and sign all necessary contracts for emission control systems or process modifications, or issue orders for the purchase of component parts to accomplish emission control or process modification.

(3) April 1, 1974. Initiate on-site construction or installation of emission control equipment or process modification.

(4) April 1, 1975. Complete on-site construction or installation of emission control equipment or process modification.

(5) May 31, 1975. Final compliance with the regulations cited in paragraph (a) of this section.

(6) Any owner or operator of stationary sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within five days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(c) Paragraph (b) of this section shall not apply:

(1) To a source which is presently in compliance with the regulations cited in paragraph (a) of this section and which has certified such compliance to the Administrator by September 15, 1973. The Administrator may request whatever supporting information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the State and approved by the Administrator.

(3) To a source whose owner or opera-

tor submits to the Administrator, by September 15, 1973, a proposed alternative schedule. No such schedule may provide for compliance after May 31, 1975. If promulgated by the Administrator such schedule shall satisfy the requirements of this paragraph for the affected source.

(d) Nothing in this paragraph shall preclude the Administrator from promulgating a separate schedule for any source to which the application of the compliance schedule in paragraph (b) of this section fails to satisfy the requirements of § 51.15(b) and (e) of this subchapter.

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[40 CFR Part 52]

PENNSYLVANIA

Approval and Promulgation of Implementation Plans

Background. The transportation control plan submitted by the Commonwealth of Pennsylvania for attainment of the primary national ambient air quality standard for carbon monoxide (CO) for the Southwest Pennsylvania Intrastate Region and for the Pennsylvania portion of the Metropolitan Philadelphia Interstate Region and for photochemical oxidants (O_x) for the Southwest Pennsylvania Intrastate Region was disapproved in part on June 15, 1973. This notice of proposed rulemaking sets forth regulations which in the Administrator's judgment could be implemented in addition to the approved portions of the Pennsylvania plan to attain and maintain the national standard for carbon monoxide in the Southwest Pennsylvania Intrastate Region and the Pennsylvania portion of the Metropolitan

Philadelphia Interstate Region and for photochemical oxidants in the Southwest Pennsylvania Intrastate Region.

If revisions to the State plan are submitted and determined to be approvable prior to Federal promulgation, these proposed regulations will be withdrawn. If revisions to the State plan are submitted and determined to be approvable after Federal promulgation, then those Federal regulations will be rescinded. It is the desire of the Environmental Protection Agency that the plan to attain and maintain the carbon monoxide standard in both Regions and the photochemical oxidant standard in the Southwest Pennsylvania Intrastate Region be a State plan carried out by the State or its designated representative.

SUMMARY

Portions of the Pennsylvania plan were not approved on June 15, 1973, because the justification for claimed reductions and the procedures for administration, enforcement, and monitoring of the strategies were not adequate. Although the general strategies proposed in the plan were approved, the specific control strategy package was not approved. The specific control strategies in the state plan did not guarantee a sufficient degree of carbon monoxide and hydrocarbon emissions reductions to justify a finding that carbon monoxide and photochemical oxidant air quality standards would be attained.

Pennsylvania's request for a 2-year extension cannot be approved at this time because the submittal does not contain sufficient supporting data on the technical infeasibility of the considered control strategy. The opinion of the D.C. Circuit Court of Appeals in NRDC v. EPA requires the agency to apply a very strin-

gent standard of review to state extension requests. On our part, we are proposing a one-year extension of the compliance date because implementation of an air bleed retrofit program cannot be completed until mid-1976. Alternative strategies for this period do not appear technically feasible. If evidence presented at the public hearings or submitted to the agency during the comment period indicates that an additional extension is justified or that this one-year extension is not justified, appropriate revisions will be made in our final promulgation.

The proposed regulations are designed to correct specific deficiencies in the state plan. Because the state plan lacks adequate assurance that all gasoline powered light duty vehicles subject to the Pennsylvania Vehicle Inspection Program will meet emission limitations, a regulation is proposed to prohibit the Commonwealth of Pennsylvania from registering or allowing the operation of vehicles which cannot show proof of satisfactorily the state plan lacks specific assurances of the statep lan lacks specific assurances of emissions reductions from improvements to public transportation, regulations are proposed to establish exclusive bus lanes and to restrict on-street parking. Because the state plan provides no specific "fail-safe" vehicle restraint program, a regulation is proposed to achieve a minimum 13 percent reduction in the number of motor vehicles entering the Central Business Districts of both Philadelphia and Pittsburgh on working days.

A regulation also is proposed to require an air bleed retrofit of all pre-1968 light-duty vehicles and to require inspection and maintenance of these vehicles. As a final assurance of adequate emission reductions, a backup regulation is proposed to limit gasoline sales to their 1972 levels

in both regions in the event, now considered unlikely, that market conditions would otherwise allow those sales to increase.

The strategies proposed herein are projected to achieve a 58 percent reduction in carbon monoxide emissions to meet the national ambient air quality standard for carbon monoxide by May 31, 1976, in the Pennsylvania portion of the Metropolitan Philadelphia Interstate Region, and a 57.3 percent reduction in carbon monoxide emissions and 56.5 percent reduction in hydrocarbon emissions to meet the national ambient air quality standards for carbon monoxide and photochemical oxidants by May 31, 1976, in the Southwest Pennsylvania Intrastate Region.

TRANSPORTATION CONTROL ALTERNATIVES

Analysis of the air quality problems in the Commonwealth of Pennsylvania reveal carbon monoxide problems in the Philadelphia and Pittsburgh CBD's within the Metropolitan Philadelphia Interstate Region and the Southwest Pennsylvania Intrastate Region.

Since virtually all carbon monoxide emissions are vehicle related, alternative measures consist of reducing emissions emanating from each vehicle or of reducing vehicular travel. Reductions in emissions from vehicles can be obtained through inspection and maintenance programs and from incorporation of various retrofit devices. Reductions in Vehicle Miles Traveled (VMT) can be

New Jersey State Implementation Plan to Meet Federal Air Quality Standards

Inserted on following page

NEW JERSEY STATE IMPLEMENTATION PLAN TO MEET NATIONAL AIR QUALITY STANDARDS

LEGAL BASE REQUIRED FOR AIR POLLUTION CONTROL

Promulgation of national air quality standards for sulfur dioxide, particulate matter, carbon monoxide, photochemical oxidants, hydrocarbons and nitrogen dioxide on April 28, 1971, provides goals which serve as a base for the preparation of implementation plans.

Title 42, Code of Federal Regulations, specifies legal authority which a state needs in order to carry out its regulatory functions. Essential is authority to:

(1) Adopt emission standards and limitations and any other measures necessary for attainment and maintenance of national standards.

(2) Enforce applicable laws, regulations, and standards, and seek injunctive relief.

(3) Abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons, i.e., authority comparable to that available to the Administrator under Section 303 of the Act.

(4) Prevent construction, modification, or operation of any stationary source at any location where emissions from such source will prevent the attainment or maintenance of a national standard.

(5) Obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources.

(6) Require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such stationary sources; also authority for the State to make such data available to the public as reported and as correlated with any applicable emission standards or limitations.

In the opinion of the office of the Attorney General, New Jersey has adequate legal authority to fulfill the above requirements.

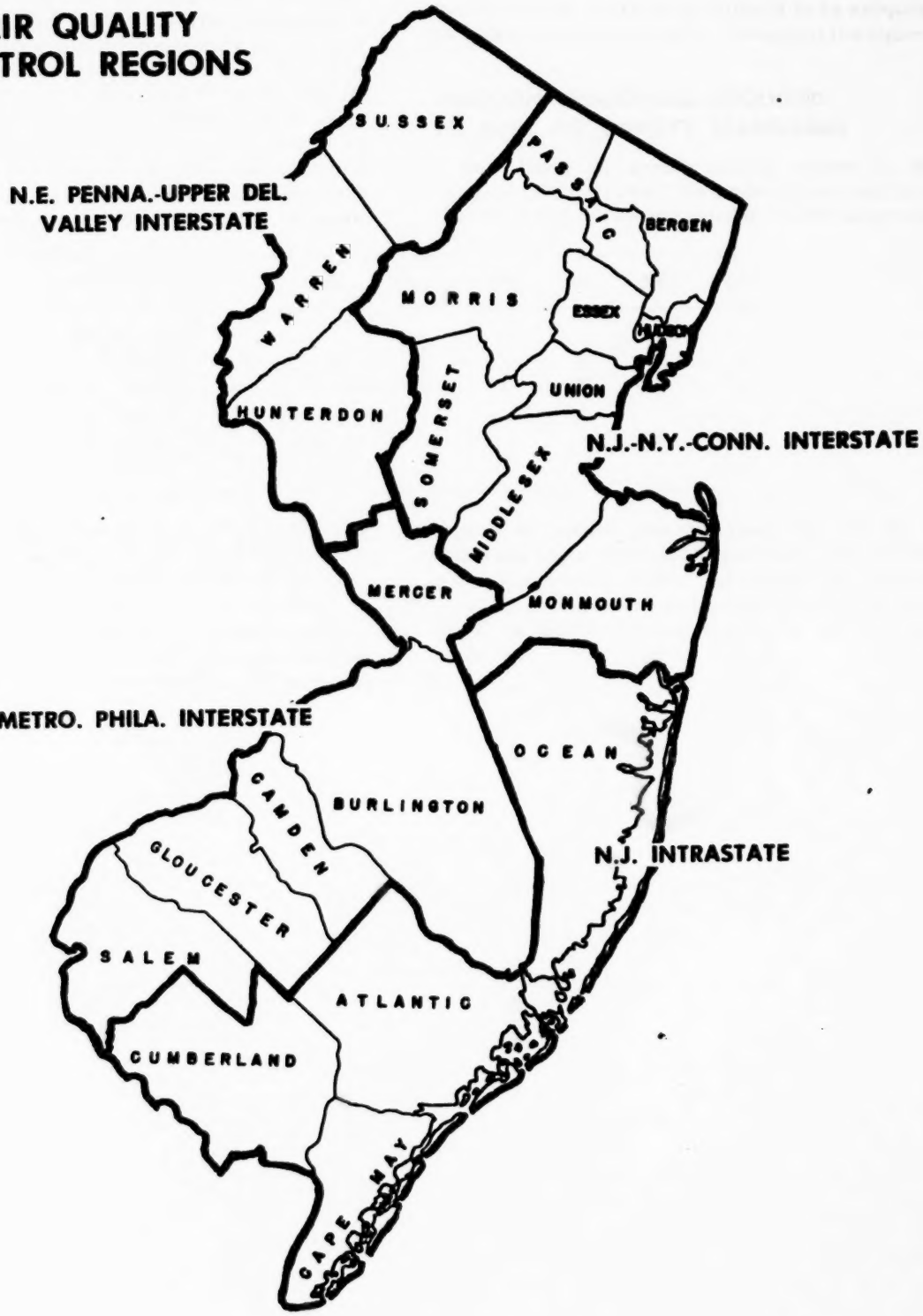
PRIORITY CLASSIFICATIONS OF AIR QUALITY CONTROL REGIONS

(For New Jersey Planning Purposes)

REGION	POLLUTANT	CLASSIFICATION	REASON (ug/m^3)
N.J., N.Y., Conn.	Particulates	I	144.4 g.m., Hoboken
	SO_2	I	364 a.m., N.Y.C.
	CO	I	26450 1-hr. avg. N.Y.C.
	NO_2	I	148 a.m., N.Y.C.
	HC	I	359 1-hr. avg. N.Y.C. for Ox
Metro. Philadelphia	Particulates	I	110 g.m., Phila.
	SO_2	I	128 a.m., Phila.
	CO	I	33.3 (p.p.m.) 8-hr. avg. Burlington
	NO_2	I	228 a.m., Phila.
	HC	I	.150 (p.p.m.) 1-hr. avg. Camden
N.E. Penna. - Upper Delaware Valley	Particulates	I	159 g.m., Scranton
	SO_2	II	.023 (p.p.m.) a.m., Phillipsburg
	CO	III	11.3 (p.p.m.) 8-hr. avg., Phillipsburg
	NO_2	I	143 a.m., Reading
	HC	III	Urban Place
N.J. Intrastate	Particulates	III	Emission reduction at Beesley Pt. power plant
	SO_2	Ia	547 24-hr. avg., Beesley Pt. power plant
	CO	I	25.2 (p.p.m.) 8-hr. avg., Atlantic City
	NO_2	III	Urban Place
	HC	III	Urban Place

g.m. – annual geometric mean
a.m. – annual arithmetic mean
p.p.m. – parts per million
ug/m^3 – micrograms per cubic meter

Regional priority classifications serve as a general guide to ambient air quality as regards specified pollutants. Additionally, they serve as guides for determination of the extent of air monitoring necessary in a particular region, as well as for emission reduction criteria required to prevent air pollution emergency episodes in such regions.



POLLUTANT EMISSIONS INFLUENCE ON AMBIENT AIR QUALITY

Strategies to attain national air quality standards are based on the theorem that air quality in a geographic region is determined largely by the magnitude of emissions discharged into the atmosphere of such area. Thus, it is assumed that air quality in a designated geographic area may be controlled by regulating the emissions from the sources of pollution which affect that area. In regions where existing air quality is not within the accepted standards, the percentage of improvement required is considered to be achievable by a similar percentage reduction in the emissions from the sources of pollution which affect the area.

Calculation of any emission reduction required is based on existing air quality at the most polluted site in a region. Reductions which will provide acceptable air quality at such a site are considered to be adequate to provide acceptable air quality throughout the region.

EMISSION REDUCTIONS REQUIRED TO MEET AIR QUALITY STANDARDS

New Jersey air quality control regions in which improvement in ambient air quality is required to meet national standards are indicated in the following table.

POLLUTANT	SO_2	Part.	CO	HC	NO_2	Ox
Region						
N.J.-N.Y.-Conn.	X	X	X	X	X	X
Metro Philadelphia	X	X	X	X	X	X
N.E. Penna.						
Upper Del. Val.	X	X			X	
N.J. Intrastate			X			

Condensed on the following pages are detailed data for each region in which air quality must be improved through reduction in permissible emissions, including current air quality, emissions reductions required and projections of anticipated results. Reductions of sulfur dioxide levels in the N.J.-N.Y.-Conn. region are deemed to be adequate for the Metropolitan Philadelphia region. Reductions also are computed for the N.J. Intrastate region because different fuel sulfur content is prescribed for that region. Attainment of acceptable levels for hydrocarbons and nitrogen dioxide is deemed to be adequate for the control of photochemical oxidants.

SULFUR DIOXIDE

NEW JERSEY-NEW YORK-CONNECTICUT INTERSTATE AIR QUALITY CONTROL REGION

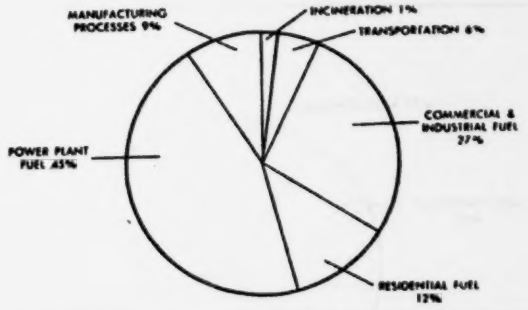
National Air Quality Standards:

Primary: 24 hr. avg. max. = 0.14 ppm
Annual avg. = 0.03 ppm

Secondary: 3 hr. avg. max. = 0.5 ppm
24 hr. avg. max. = 0.10 ppm
Annual avg. = 0.02 ppm

Total SO_2 Emitted into New Jersey Air from all Sources in N.J. Portion of Region:

286,166 tons per year (1970)



	Newark
Test Site Recording Highest Concentration in N.J. Part of Region	
*Maximum Concentration Recorded at Newark Site	3 hr. avg. max. = 0.318 ppm 24 hr. avg. max. = 0.203 ppm Annual avg. = 0.052
Emission Reduction Required to Meet National Air Quality Standards	Secondary 3 hr. avg. max. = 0% Primary 24 hr. avg. max. = 31% Secondary 24 hr. avg. max. = 51% Primary Annual avg. = 42% Secondary Annual avg. = 62%
Reduction to be Achieved as the Result of New N.J. Regulations (1)	54%
Will National Air Quality Standards be Achieved by 1975?	Secondary 3 hr. avg. max. = Yes Primary 24 hr. avg. max. = Yes Secondary 24 hr. avg. max. = Yes Primary Annual avg. = Yes Secondary Annual avg. = No
Further Reductions in Emissions Required to Meet National Standards	Secondary 3 hr. avg. max. = 0% Primary 24 hr. avg. max. = 0% Secondary 24 hr. avg. max. = 0% Primary Annual avg. = 0% Secondary Annual avg. = 8%

*Data Recorded from January 1, 1970 to December 31, 1970

(1) The implementation of the third stage of Chapters 10 and 10A of New Jersey's Air Pollution Control Code.

COMMENTS – New Jersey presently is not meeting the national secondary air quality standard for sulfur dioxide in the Region. On the basis of best available information, New Jersey will be within 8% of meeting the national secondary annual avg. air quality standard in the N.J.-N.Y.-Conn. Air Quality Control Region by 1975. This moderately small deviation from the standard is considered to be beyond the confidence level of the data base upon which the calculations were made. Only further study of air quality trends will support justification for additional regulation of sulfur dioxide emissions.

PARTICULATES

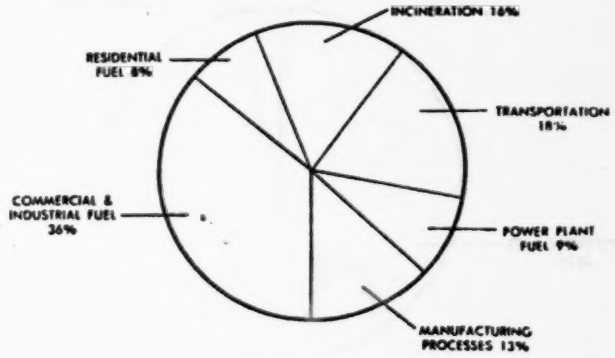
NEW JERSEY-NEW YORK-CONNECTICUT INTERSTATE AIR QUALITY CONTROL REGION

National Air Quality Standards:

Primary:	24 hr. avg. max. = 260 ug/m^3 Annual avg. = 75 ug/m^3	Secondary: 24 hr. avg. max. = 150 ug/m^3 Annual avg. = 60 ug/m^3

Total Particulates Emitted into N.J. Air from all Sources for N.J. Portion of Region:

91,606 tons per year (1970)



	Hoboken
Test Site Recording Highest Concentration in N.J. Part of Region	
*Maximum Concentration Recorded at Hoboken Site	24 hr. avg. max. = 316 ug/m^3 Annual avg. = 120 ug/m^3
EPA, IPP Diffusion Model Predicted Air Quality after Full Enforcement of N.J. Existing and Proposed Control Regulations	24 hr. avg. max. = 176 ug/m^3 Annual avg. = 71 ug/m^3
Will National Air Quality Standards be Achieved by 1975?	Primary 24 hr. avg. max. = Yes Secondary 24 hr. avg. max. = No Primary Annual avg. = Yes Secondary Annual avg. = No
Further Reductions in Emissions Required to Meet National Standards	Primary 24 hr. avg. max. = 0% Secondary 24 hr. avg. max. = 22% Primary Annual avg. = 0% Secondary Annual avg. = 31%

*Data Recorded from January 1, 1969 to December 31, 1969

COMMENTS – New Jersey presently is not meeting the national air quality standards for particulates in the Region. Since the technology concerned with the methods of analysis and emission control are not developed to the point which will enable New Jersey to develop strategies to meet the national secondary standard for particulates, New Jersey has requested an eighteen (18) month extension to conduct further studies and develop control strategies prior to preparing a plan which will enable New Jersey to meet the national secondary particulate standard.

CARBON MONOXIDE

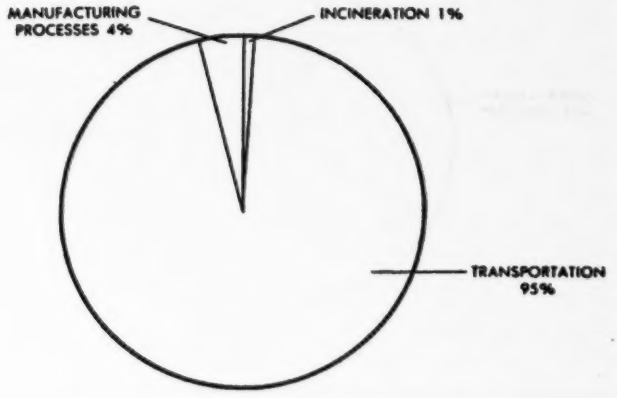
NEW JERSEY-NEW YORK-CONNECTICUT INTERSTATE AIR QUALITY CONTROL REGION

National Air Quality Standards:

1 hr. avg. max. = 35 ppm
8 hr. avg. max. = 9 ppm

Total CO Emitted into New Jersey Air from all Sources in N.J. Portion of Region:

2,823,096 tons per year (1970)



Test Site Recording Highest Concentration in N.J. Part of Region		**Newark**	
*Maximum Concentration Recorded at Newark Site	1 hr. avg. max. = 30 ppm 8 hr. avg. max. = 19 ppm		
Emission Reduction Required to Meet National Air Quality Standards (Assumes Federal Regulation of New Vehicles)		**1975**	**1977**
	1 hr. avg. max.	0%	0%
	8 hr. avg. max.	37 38%	22% 17%
Reduction to be Achieved as the Result of New N.J. Regulations (1)		19%	19% 12%
Will National Air Quality Standards be Achieved?	1 hr. avg. max.	Yes	Yes
	8 hr. avg. max.	No	No
Further Reductions in Emissions Required to Meet National Standards	1 hr. avg. max.	0%	0%
	8 hr. avg. max.	~~19%~~ 25%	3% 2%

*Data Recorded from January 1, 1970 to December 31, 1970

(1) Chapter 15, N.J. Air Pollution Control Code, CONTROL AND PROHIBITION OF AIR POLLUTION FROM LIGHT-DUTY GASOLINE-FUELED MOTOR VEHICLES (Proposed)

COMMENTS - New Jersey presently is not meeting the national 8 hr. avg. max. air quality standard for CO in the Region. On the basis of best available information, and by the adoption of proposed Chapter 15, New Jersey Air Pollution Control Code, New Jersey would be within 3% of meeting the national avg. max. 8 hr. air quality standard in the N.J. N.Y.-Conn. Air Quality Control Region in 1977. This small deviation from the standard is considered beyond the confidence level of the calculations used and only further study of air quality trends would support justification for additional regulation of CO emissions.

201a-7

HYDROCARBONS (NONMETHANE)

NEW JERSEY-NEW YORK-CONNECTICUT INTERSTATE AIR QUALITY CONTROL REGION

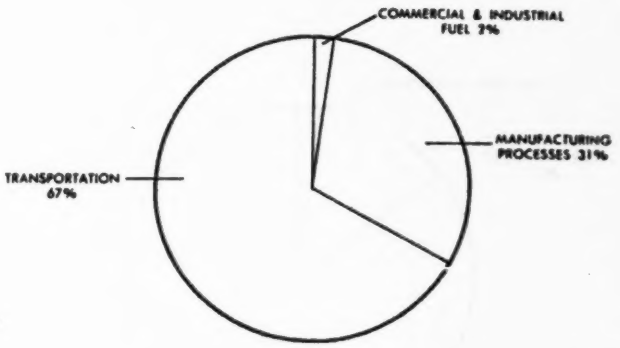
National Air Quality Standards:

3 hr. 6:00 a.m. to 9:00 a.m. max. avg.=0.24 ppm

Total Hydrocarbons Emitted into New Jersey Air from all Sources in N.J. Portion of Region:

733,035 tons per year (1970)

Hydrocarbons (Nonmethane): It is estimated that the nonmethane portion of total hydrocarbons is approximately 35% of the total HC, i.e., 256,562 tons of hydrocarbons (nonmethane)



Test Site Recording Highest Concentration in N.J. Part of Region	**Bayonne**	
*Maximum Concentration Recorded at Bayonne Site (Hydrocarbons Nonmethane)	3 hr. 6:00 a.m. to 9:00 a.m. avg. max. = 3.50 ppm	
Emission Reduction Required to Meet National Air Quality Standards (Assumes Federal Regulation of New Vehicles)	**1975** 91%	**1977** 90%
Reduction to be Achieved as the Result of New N.J. Regulations (1)	19%	19%
Will National Air Quality Standards be Achieved?	See Comments	See Comments
Further Reductions in Emissions Required to Meet National Standards	See Comments	See Comments

*Data Recorded from January 1, 1970 to December 31, 1970

(1) Chapter 15, N.J. Air Pollution Control Code, CONTROL AND PROHIBITION OF AIR POLLUTION FROM LIGHT-DUTY GASOLINE-FUELED MOTOR VEHICLES (Proposed)

COMMENTS – New Jersey presently is not meeting the national air quality standard for hydrocarbons in the Region, and this numerical standard will not be met in 1975 or 1977. However, according to the Federal Register (Vol. 36, No. 158, Par. 420. 14-c-4), hydrocarbon emission reductions need only be sufficient to meet the oxidant standard.

Between 1970 and 1975 total hydrocarbon emissions are expected to be reduced 21% because of Federal regulation of new vehicles, plus the 19% which would be expected from the adoption of proposed Chapter 15. Further reduction will result from control of stationary sources as set forth in proposed Chapter 16, CONTROL AND PROHIBITION OF AIR POLLUTION FROM VOLATILE ORGANIC SUBSTANCES.

201a-8

NITROGEN DIOXIDE

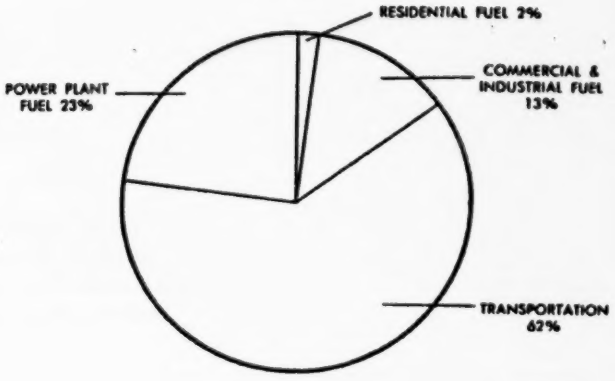
NEW JERSEY-NEW YORK-CONNECTICUT INTERSTATE AIR QUALITY CONTROL REGION

National Air Quality Standards:

Annual avg. = 100 ug/m^3

Total Nitrogen Dioxide Emitted into New Jersey Air from all Sources in New Jersey Portion of Region:

478,315 tons per year (1970)



Test Site Recording Highest Concentration in N.J. Part of Region	**Jersey City**	
*Maximum Concentration Recorded at Jersey City Site	Annual avg. = 190 ug/m^3	
Emission Reduction Required to Meet National Air Quality Standards (Assumes Federal Regulation of New Vehicles)	**1975** 45%	**1977** 39%
Reduction to be Achieved as the Result of New N.J. Regulations	0	0
Will National Air Quality Standards be Achieved?	No	No
Further Reductions in Emissions Required to Meet National Standards	45%	39%

*Data Recorded from July, 1971 to September, 1971

COMMENTS – New Jersey presently is not meeting the national air quality standard for nitrogen dioxide in the Region. It is the intent of New Jersey to promulgate meaningful and enforceable regulations to meet the national air quality standard for nitrogen dioxide in the N.J.-N.Y.-Conn. Interstate Air Quality Control Region when technology and strategies for control of NO_2 from existing stationary sources are available.

201a-9

PHOTOCHEMICAL OXIDANTS

NEW JERSEY-NEW YORK-CONNECTICUT INTERSTATE AIR QUALITY CONTROL REGION

National Air Quality Standards:

1 hr. avg. max. = 0.08 ppm

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Total Hydrocarbons Emitted into New Jersey Air from all Sources in N.J. Portion of Region:

733,035 tons per year (1970)

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NOTE: Photochemical oxidants are a result of chemical reaction between hydrocarbons and nitrogen oxides in the presence of bright sunlight. The degree of oxidant formation is in part dependent upon the levels of hydrocarbons. Hydrocarbon emissions are an indicator of potential photochemical oxidant formation.

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Test Site Recording Highest Concentration in N.J. Part of Region	**Bayonne**	
*Maximum Concentration Recorded at Bayonne Site (Corrected for NO_2)	1 hr. avg. max. = 0.135 ppm	
Emission Reduction Required to Meet National Air Quality Standards (Assumes Federal Regulation of New Vehicles)	**1975** 21%	**1977** 12%
Reduction to be Achieved as the Result of New N.J. Regulations (1)	19%	19%
Will National Air Quality Standards be Achieved?	No	Yes
Further Reductions in Emissions Required to Meet National Standards	2%	0%

40

*Data Recorded from January 1, 1970 to December 31, 1970

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(1) Chapter 15, N.J. Air Pollution Control Code, CONTROL AND PROHIBITION OF AIR POLLUTION FROM LIGHT-DUTY GASOLINE-FUELED MOTOR VEHICLES (Proposed)

COMMENTS -- New Jersey presently is not meeting the national air quality standard for photochemical oxidants in the Region. On the basis of best available information, ar[illegible] by the adoption of proposed Chapter 15 of New Jersey Air Pollution Control Code, New Jersey would be within 2% of meeting the national air quality standard in the N.J. N.Y.-Conn. Air Quality Control Region in 1975. This small deviation from the standard is considered beyond the confidence level of the calculations used and only further study of air quality trends would support justification for additional regulation of those pollutants which contribute to the oxidant concentration in the atmosphere.

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201a-10

SULFUR DIOXIDE

NEW JERSEY INTRASTATE AIR QUALITY CONTROL REGION

National Air Quality Standards:

Primary: 24 hr. avg. max. = 0.14 ppm
Annual avg. = 0.03 ppm

Secondary: 3 hr. avg. max. = 0.5 ppm
24 hr. avg. max. = 0.10 ppm
Annual avg. = 0.02 ppm

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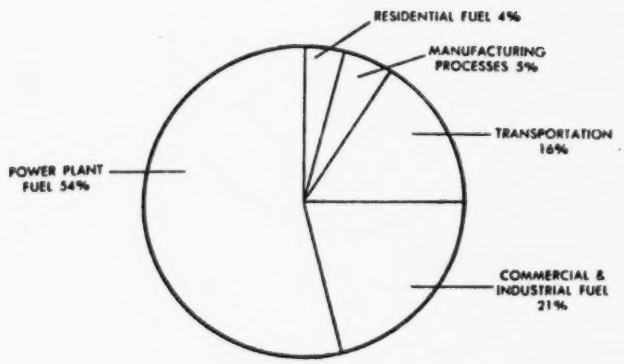
20

Total SO_2 Emitted into New Jersey Air from all Sources in Region:

65,987 tons per year (1970)



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Test Site Recording Highest Concentration in Region	**Toms River**
40 *Maximum Concentration Recorded at Toms River Site	3 hr. avg. max. = 0.052 ppm 24 hr. avg. max. = 0.047 ppm Annual avg. = 0.005 ppm
Emission Reduction Required to Meet National Air Quality Standards	1970 Secondary 3 hr. avg. max. = 0% Primary 24 hr. avg. max. = 0% Secondary 24 hr. avg. max. = 0% Primary Annual avg. = 0% Secondary Annual avg. = 0%
50 Will National Air Quality Standards be Achieved in 1975?	Yes

*Data Recorded from August 1, 1970 to December 31, 1970

COMMENTS New Jersey presently is meeting the national air quality standards for sulfur dioxide in the Region.

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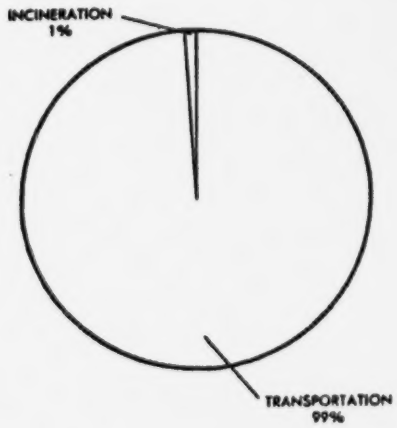
201a-11

CARBON MONOXIDE

NEW JERSEY INTRASTATE AIR QUALITY CONTROL REGION

National Air Quality Standards:

1 hr. avg. max.= 35 ppm
8 hr. avg. max. = 9 ppm



Total CO Emitted into New Jersey Air from all Sources in Region:

224,838 tons per year (1970)

Test Site Recording Highest Concentration in Region		**Atlantic City**	
*Maximum Concentration Recorded at Atlantic City Site	1 hr. avg. max. =15 ppm 8 hr. avg. max. =11 ppm		
		1975	**1977**
Emission Reduction Required to Meet National Air Quality Standards (Assumes Federal Regulation of New Vehicles)	1 hr. avg. max.	0%	0%
	8 hr. avg. max.	8%	0%
Reduction to be Achieved as the Result of New N.J. Regulations (1)		19%	19%
Will National Air Quality Standards be Achieved?	1 hr. avg. max.	Yes	Yes
	8 hr. avg. max.	Yes	Yes
Further Reductions in Emissions Required to Meet National Standards	1 hr. avg. max.	0%	0%
	8 hr. avg. max.	0%	0%

*Data Recorded from May, June & August of 1971

(1) Chapter 15, N.J. Air Pollution Control Code, CONTROL AND PROHIBITION OF AIR POLLUTION FROM LIGHT-DUTY GASOLINE-FUELED MOTOR VEHICLES (Proposed)

COMMENTS – New Jersey presently is not meeting the national 8 hr. avg. max. air quality standard for CO in the Region. On the basis of the best available information, and by the adoption of proposed Chapter 15, New Jersey Air Pollution Control Code, New Jersey would meet the national 8 hr. avg. max. air quality standard in the New Jersey Intrastate Air Quality Control Region in 1975.

Excerpts From Transcript

Statement of Malcolm Zlotkin,
Special Counsel to Agencies

[T. I, 85]

. . . I think there would be a sports complex somewhere in the Meadowlands. The question is today whether or not this particular site is environmentally acceptable.

* * *

Cross Examination of Jack C. McCormick, Expert Witness for Sports Authority — Letter from United States Environmental Protection Agency to Governor Cahill

[T. VIII, 10]

* * *

Q. Now, let me ask you whether the contents of this letter were ever discussed. You say you did not see the Letter?Now, I am going to ask you whether the subject matter was discussed. I will read the letter to Governor Cahill:

> "This concerns the proposed development of the Hackensack Meadowlands and attendant impact on air quality.
>
> "Because of the site and location of the [11]Hackensack Meadowlands within the New Jersey - New York - Connecticut air quality control region, development of those Meadowlands will have a great influence upon the achievement and maintenance of primary

and secondary air quality standards. The Environmental Protection Agency is now engaged in a review of New Jersey's air quality standard implementation plans: for this review it is important that current Meadowlands development information be available. Especially important are development plans for the period prior to and immediately following 1975.

"It would be very much appreciated if you would designate a representative to discuss with my staff the scope and nature of the information we believe necessary for our review.

"Under the provisions of the Clean Air Act, E.P.A. review of implementation plans must be completed by May 30th of this year. I will be looking forward to your reply.

"Respectfully yours, Gerald M. Hansler, P.E., Regional Administrator."

* * *

Cross Examination of Jack C. McCormick, Expert Witness for Sports Authority — Statement concerning the effect of the Sports Complex on the Clean Air Act

[T. VIII, 13]

* * *

Excerpts From Transcript

Q. Did you consider the effect of the sports complex on New Jersey's ability to implement clean air amendments in 1975?

* * *

[14]

* * *

Q. So the answer to my question is no, you did not consider how the sports complex would affect New Jersey's ability to implement the clean air amendments in 1975?A. In the sense you've asked the question, no.

* * *

Direct Examination of Kenneth Johnson, Director of Air and Water Program Division for Region Two of the United States E.P.A., concerning information that should be considered in New Jersey's Implementation Plan

[T. XVIII, C1]

Q. So that New Jersey without the extension would not meet the standards by 1975 and that would be specifically with regard to the automobile pollution including carbon monoxide? A. Yes.

Q. Now, what steps will New Jersey have to take in order to help it meet the carbon monoxide standards by even 1977? A. Well, the steps that are called for in their plan, again relying to a great degree on the Federal

requirements for emission from new cars, also relying on New Jersey's inspection system for automobiles, which is designed to eliminate to the greatest degree possible obviously heavy emitters, a combination of those two things.

Basically, if no extraordinary circumstances arise that combination of strategies, relying on Federal New Car requirements and relying on the inspection system, is essentially New Jersey's plan.

Q. As the New Jersey implementation plan was submitted, did it include development of the Hackensack Meadowlands Region or the sports complex? A. No.

Q. It did not include either one? A. No.

[C2] Q. And the plan as submitted gave no indication of the effect of the possible development of those areas? A. They did talk about expected growth and what might have to be done to take care of expected growth, but they were not specific with regard to the Hackensack Meadowlands, nor with regard to the sports complex.

Q. Without the inclusion of data as to the effects of the sports complex on the Meadowlands Development in the implementation plan, does your agency consider the plan acceptable? A. We consider the plan not as a document which is accepted once, but the Clean Air

Excerpts From Transcript

Act recognizes that in stating that each State in their implementation plan has to have provisions for revising the plan in case, for example, there is a change in the National Ambient Air Standards, in case there is a reason to believe that more expeditious methods or improved methods are available to achieve and maintain the standards, or after the Administrator of the Environmental Protection Agency finds that there is reason to believe that the plan will not achieve and maintain the air quality standards based on information, which he may get at any point in time.

So with regard to that, we cannot foresee all new [C3] developments which will take place in a State or in an air quality control region as developments, for example, such as the Hackensack Meadowland come up.

It is expected that each State will consider those if they're of such a level that it will affect the achievement or maintenance of the air quality standards and revise the plan accordingly.

So when you say was it possible to approve New Jersey's plan without information on the Hackensack Meadowlands, I'll say to that that we have indicated to the State of New Jersey that we believe that they should give consideration to the air pollution impact.

We asked for them to supply to us information relating to the development of the Meadowlands. We sent to Governor Cahill a letter on the 6th of April asking for information regarding the development of the Hackensack Meadowlands, because we felt that because

the Meadowlands Development was so extensive, supposed to be so extensive, that it may affect the achievement, maintenance of air quality standards.

We asked Governor Cahill to provide the information and he answered that letter, I believe on the 25th of April, saying that he was designated, I believe Commissioner Sullivan and Mr. McDowell to provide the information.

[C4] And subsequent to that we have had two meetings with State representatives on this.

Q. I have two letters that we have marked. One is C-A17 A and the other is C-A-17 B.

Would you tell us are those the letters you referred to as going to and from Governor Cahill? A. Yes, they are.

Q. And the purpose of this was because of your Agency's concern with development in the Hackensack Meadowlands region. A. As it affects the achievement and maintenance of air quality standards.

Q. Of the implementation plan? A. Yes.

Q. As of now you have not received the information? A. We met or representatives of our office, I was not in attendance, met with Commissioner Sullivan and Mr. McDowell and representatives of the New Jersey Department of Environmental Protection and the Hackensack Meadowlands Development

Commission in, I believe it was, May, I'm not certain of the exact date, at which it was established that we would indeed work together, they would do their best to provide information.

Subsequent to that on the 27th of July of this year in our offices, in the regional office in New York, [C5] I and Conrad Simon, who is Chief of our Air Programs Branch, met with Mr. William Munroe of the New Jersey Department of Environmental Protection and Mr. Vincent Marchessani to discuss our request for information.

We were told by Mr. Munroe that because we had provided technical assistance with regard to the development of their implementation plan, he would appreciate it if we could perhaps provide some technical assistance in consideration of the impact that the development of the Hackensack Meadowlands area would have and with regard to the development of the sports complex.

He indicated to us that he would appreciate it if we could make available to his office, the New Jersey Department of Environmental Protection, expertise with regard to predicting traffic flows, vehicular movement around the sports complex.

He also asked us if we could provide an opinion as to whether the sports complex automobile emissions themselves might have an impact on the generation of photochemical oxidents in this air quality control region.

Excerpts from Transcript

He asked that because he pointed out that the standards cite the emission of hydrocarbons between 6 and 9 a.m. because of their effect on the later -- in the afternoon formation of photochemical oxidents.

He asked if we had a sporting event in the [C6] afternoon what would the impact of these emissions have upon the generation of photochemical oxidents.

He asked us also if we could provide information with regard to the measurements of automobile exhaust related pollutants around other stadia in the country.

He indicated that he was prepared to undertake ambient air quality testing in the Meadowlands area during the next year to establish existing concentrations of automobile exhaust related pollutants.

He indicated that in answer to our specific questions, that he would attempt to provide information regarding the development of, you might say, satellite development of the Meadowlands that might be associated with the sports complex.

We asked for that because we are concerned, of course, with the achievement of National Ambient Air Quality studies including the ones related to automobiles by 1977.

We wanted to know, as a matter of fact, in our letter to Governor Cahill, we asked for information on the development just prior to, we said, 1975 there, it is immediatley subsequent to it, because Federal requirements for new car emissions, although they're to

take effect on new cars in 1975, won't affect all or even the majority of cars until perhaps several [C7] years later. So we felt we had to have information in order to make judgments upon the impact of this -- I might say during the years between now and, say, ten years from now.

* * *

[C10]

* * *

Q. And in regard to the information that you were seeking as to the effect of the sports complex on New Jersey's implementation plan, did you have occasion to study the draft impact assessment? A. I can't say study. I read through the draft impact assessment and I read through it really to see again — I'm very much interested, as is our regional office very much interested, in having information at hand which will allow us to make the best possible judgment on New Jersey's implementation plan, any necessary revisions to it. So I looked through it to see what information I might find there bearing upon that.

Q. Is there enough information in that study for you to adequately understand the impact of the sports complex on the air quality of the region in New Jersey's implementation plan? A. I would think that because we've asked the New Jersey Department of Environmental Protection to provide us additional information, that I would say we need more information as far as I am concerned, of the [C11] type I just described.

Excerpts From Transcript

Q. That would be in regard to the traffic flow? A. Yes, in regard to various conditions of traffic flow which might be expected in regard to satellite development around the sports complex, if that information can be made available, in regard to the design configurations of the stadia buildings themselves and the relationship to the parking lot and the entrance and exit points of the lot.

Q. And without that additional information you feel you cannot make an adequate estimate? A. Yes. And I might say this, we indicated to New Jersey that that is the type of information that we would like to see. New Jersey asked if we would work together with them, sort of a partnership of governments. When I say New Jersey, I mean the New Jersey Department of Environmental Protection, as sort of a partnership of governments, along with the Meadowlands Commission, to come up with the best possible answer.

It is entirely likely that during our work together we will be seeking additional information which I couldn't begin to list entirely now, but which may become obvious that we do have as the time passes on.

Q. And the year 1990 was used in the Draft Impact Assessment as the year for determining the impact on air quality with regard to the carbon monoxide. Is that satisfactory? A. No. As I indicated earlier, Federal requirements, 1975 for carbon monoxide, and hydrocarbons, 1976 for oxides of nitrogen, make it obvious that unless we have information about those time periods, because we will be talking about vehicles which have not been controlled to that extent for

several years on into perhaps the 1980s, that we need the information, as I said, perhaps from a period of maybe 10 years today into the 1980s, and it is essential that that information be considered before you can make a good judgment as to whether we will achieve and maintain the National Ambient Air Quality Standards.

Q. In that regard were you also required to get related traffic information? A. Yes. We would like to know with regard to all development of the Hackensack Meadowlands as best as we can, especially with regard to the sports complex we're considering now, because there we're talking about what amounts to a slug of traffic that will enter at one short time interval and exit at another, we would like to know the character of that.

[C13] If we can, we would like to know what proportion of vehicles we can expect to be controlled and what proportion not contolled as we move along.

We would like to know what congestion we can, in all likelihood, expect as a result of the traffic into and out of the sports complex.

Q. And that information is presently lacking in the draft impact assessment? A. As I read it. I did not study it intently.

Q. Also would the effect of traffic on the various tunnels in the region play a part? A. If you're talking about the effect that perhps the Lincoln may have on traffic, if we have congestion which is going to

bottle up the Lincoln Tunnel, for example, with regard to sporting events or any event that takes place in this area, and if the bottling up of the Lincoln Tunnel affects traffic back into New Jersey, then we're going to have to consider what emissions we can expect then and for what period of time and make determinations as to what concentrations we can expect in the atmosphere and relate them to ambient air quality standards.

Anything tha. leads us to believe that we're going to have congestion is going to leadus to believe that we might have air pollution problems associated [C14] with that, and they should be considered as best we can judge.

Q. In addition to that, since matters of health are involved, wouldn't you insist that the worst possible case be the one analyzed? A. We want to see that the ambient air quality standards are achieved everywhere throughout the entire United States. We would want to see that all cases be considered so we can determine whether they're going to be achieved or maintained, yes.

* * *

Redirect examination of James R. Mahoney, Expert Witness for Sports Authority, relating to possible violations of federal clean air standards caused by the Sports Complex

[T. XXV, G14]

Excerpts From Transcript

REDIRECT EXAMINATION BY MR. PITNEY:

Q. Doctor, based upon your professional experience and judgment and the revised figures which have been developed in these proceedings, in particular the revised figures that have been submitted this afternoon, how many times a year are the concentrations of carbon monoxide likely to exceed 35 parts per million, assuming, first of all, that there are 18,330 automobiles in the parking lot?

MR. MEZEY: I think that's on an exhibit already.

MR. PITNEY: No, it's not on the exhibit and that's why I am asking the question.

MR. ZLOTKIN: If I understand the testimony correctly, and from cross examination, the items shown on S-A-34 -- excuse me, S-A-34 and C-A-36 and S-A-28 were mutual exclusives, so that there is no indication of it, of a per year figure.

MR. MEZEY: We're talking about games per year and the frequency refers to games per year.

MR. ZLOTKIN: But each figure given is mutually exclusive; if they add up, you will see it's way more than 10.

* * *

A. Well, in my judgment, the most probable number of times per year that the concentration of carbon monoxide would exceed 35 parts per million is one.

Excerpts from Transcript

Q. And is this for 18,330 automobiles? A. That's correct, yes.

Q. All right. Now, how many times a year in your professional experience and judgment, Doctor, would it exceed 35 parts per million on the assumption that there are to be 25,000 automobiles in a parking lot?
A. My best judgment of that would be one, also.

Q. And is it possible in your professional experience and judgment that concentrations in excess of 35 parts per million could occur more than once a year on the assumption that there are 18,330 automobiles in the parking lot?

* * *

[G17]

* * *

A. Well, my answer is, yes, it is possible that it could occur in excess of 35 parts per million, it could occur more than once a year.

Q. And is it also possible that if you assume 25,000 automobiles in a parking lot, concentrations in excess of 35 parts per million could occur more than once a year?
A. Yes, that's possible.

Q. And in your opinion, are there ways to avoid concentrations of carbon monoxide in excess of 35 parts per million in the parking lots? A. Yes, based

upon my examination of the model studies which have been presented here, we find that the major source of the concentration in excess of 35 parts per million [G18]is the assumption that there would be, whichever number we're dealing with, 18330 or 25,000 vehicles, starting their engines at a single time and queuing up and clogging the parking lot for a one hour period.

Q. Now, how, in your opinion, Doctor, could you avoid concentrations of carbon monoxide in excess of 35 parts per million? A. Concentration of carbon monoxide in excess of 35 parts per million could be avoided by means which would reduce the total number of care with engines operating in the parking lot for any given circumstance; this might include, for example, encouraging the use of bus transit and by having clear lanes for buses to both bridg passengers and to gates before the games and to depart from the games, afterwards, directly to the roads in the vicinity, so that people would be encouraged to uses buses, because of the rapid travel time and, in a way, from the stadium, that would be one method.

Another method is to take advantage of the natural dispersion of patrons across the parking lots at the completion of games, noting the walking time to the most distant parking lots is probably 15 minutes or perhaps somewhat more and if the lane flow configurations in the parking lots are fixed such that [G-19]those who reach their cars first, that is, those who have parked close to the stadium facilities themselves, those persons are given clearer access to the exit roads and this will favor the reduction of the number of idling vehicles in the lot.

Finally, if monitoring instituted at the site, specifically as far as the measurement of concentrations made near the downwind edge of the parking lot facilities indicated that these steps were not adequate to eliminate the problem, then a program of phased release of vehicles from the parking lots, which would keep the number of idling vehicles down to a number much smaller than the total number of vehicles in the lot, would be effective for this purpose.

Q. Now, this monitoring that you're talking about, would be a monitor which would actually measure emissions, as I understand your testimony. Is that correct? A. A monitor that would measure concentrations of pollutants in the ambient air.

MR. PITNEY: All right. I think that's it. I have no further questions, Doctor.

RECROSS EXAMINATION BY MR. MEZEY:

Q. Well, another way to avoid those concentrations of carbon monoxide and in excess of 35 parts per [G20] million is to limit the amount of vehicles, would it not? A. That's correct.

Q. And another way might be to establish mass transit by means of electric trains; isn't that so? A. Well, the establishment of mass transit wouldn't reduce, in particular the vehicles unless —

Q. Well, in connection with the reduction of the number of vehicles? A. Yes, what I am saying is, I

am not certain that the establishment of mass transit would cause the reduction of vehicle trip demand itself.

Q. But that hasn't been studied, has it? A. I don't know.

* * *

Excerpt From Exceptions and Objections

Petitioners' Statement of Exceptions and Objections to the Hearing Officers' Report and Recommendations
Page 21

* * *

Furthermore, more data on traffic is needed. Mr. Johnson stated specifically that if 25,000 cars are involved, EPA will need the data on them (Vol. XVIII, C15). He also added that Mr. William Munroe, Chief of the Bureau of Air Pollution Control, New Jersey Department of Environmental Protection, had requested EPA's technical assistance in predicting traffic flows and vehicular movement around the sports complex. Mr. Johnson then stated that EPA wants more information on the number of vehicles with control devices and the types of congestion which would be expected. (Ibid C13). Obviously, just to state that the carrying capacity of a road will be exceeded is not satisfactory, since congestion causes cars to go slower, and slower speeds generate more pollutants.

* * *

Mr. Johnson also stated that EPA wanted information regarding measurements of automobile related pollutants around other stadia (Ibid, C6). This information should have been requested by the hearing officers, especially since data regarding the unsatisfactory increase in pollutants in the Freehold area during racing events is readily available from the New Jersey Department of Environmental Protection.

Excerpts of Brief (Points II a and Point III)

SUPREME COURT OF NEW JERSEY
M-106 September Term 1972

In the Matter of the

Environmental Hearing on the

Proposed Sports Complex in the

Hackensack Meadowlands.

Civil Action

On Appeal from the Final Decision of the Department of Environmental Protection and the Hackensack Meadowlands Development Commission

Brief and Supplemental Appendix of Appellants, New Jersey Citizens for Clean Air, Inc. and Associations Listed Below

MEZEY& MEZEY

Attorneys for New Jersey Citizens for Clean Air, Inc., Save the Meadowlands Coalition, Citizens Committee of Hudson County, Hudson County Citizens for Clean Air, Hudson River Fisherman's Association, Weehawken Environmental Committee,

D.E.E.R., Inc., Save the Palisades Association, John Rutherford Chapter of Daughters of the American Revolution, Citizens for Conservation, A.C.T., C.A.P.A.B.L.E., Raritan Valley Environmental Council, Garden Club of Somerset Hills, Hoboken Environment Committee and CAPCOM

Frederick C. Mezey, Esq.

Of Counsel and
On the Brief

* * *

POINT II

A. Federal Standards will be Violated.

The Hearing Officers conclude that the testimony of Dr. James Mahoney, representing the Sports Authority, was "never convincingly refuted or rebutted" (Pa155-9) and that, statistically, conditions leading to the exceeding of Federal Clean Air Standards for carbon monoxide will not occur more than once a season (Pa154). These statements stand in direct contradiction to Dr. Mahoney's admission that his corrected 1975 figures were off by a margin of 42% (T. XXV. F.20) and to his corrected computations in SA 34 (Pa 237) which

show the possibility of exceeding Federal standards three times — twice more than is permissible under Federal law. These conditions are labeled Met 12 and Met 14 — 25,000 cars. (When 18,300 cars use the parking lot, the possibility of exceeding the Federal standard is twice under Met 12 conditions.)

If we apply the 10-25% error factor that Dr. Mahoney said could be expected in calculations of this type, (T. XXV, G.2), we find that Federal standards could be exceeded an additional 3 times for 25,000 cars under Met 13 conditions and one more time for 18,300 cars under Met 14 conditions. Since levels for carbon monoxide are not to be exceeded more than once a year, the statistical evidence is clear that the Sports Complex, as presently constituted, presents a definite impediment to achieving Federal Clean Air standards for at least one pollutant.

The Hearing Officers also find that the Sports Complex will not interfere with the achievement of standards for particulates and oxidants (Pa153a). This is an erroneous conclusion since the Draft Impact Analysis (SA5, Pa663-6 to 7) states that "the particulate standard will not be met by the Meadowlands region in 1990." The addition of any amount of particulates, no matter how small, under these conditions is not acceptable to the Federal Government, according to its representative Kenneth Johnson. Mr. Johnson testified that, "We cannot accept that because air is already bad that another source can be added to it " (T. XVIII, C.18). He then added that "the entire picture is made up of the sum total of all of these sources so that you might say that every source is important and should be controlled." (Id.).

As to the achievement of the oxidant standard, and the possibility that the hydrocarbon standard may not apply (Pa153), Mr. Johnson also stated that EPA wants an opinion on whether auto emissions from the Complex might have an impact on the generation of photochemical oxidants in the region (T. XVIII, C.5) and does not feel that the necessary information is contained in the Draft Impact Analysis (SA5, Pa15).

It is necessary to note that Dr. Mahoney's figures for the 1975 emissions of hydrocarbons are off by a factor of 3.06 (T. XXV, F23) and have not been corrected.

In addition the Draft states that "it is evident that the standards currently are exceeded for all five pollutants" (SA5, Pa64-20 to 21) — the five being carbon monoxide, hydrocarbons, nitrogen oxides, oxidants and particulates. Dr. Mahoney stated that background levels of pollutants could be assumed to be the same in 1975 as in 1970, since the 8% traffic increase per year would be balanced out by improved emission control devices on cars (T. XXIV, F2-F4). The implication is that background levels for all years from 1970-1975 can be considered the same. Therefore, if levels for all five pollutants are being exceeded in 1972, they will also be exceeded in 1975, in which case, the addition of pollutants from the 25,000 automobiles converging on the area will be disastrous.

* * *

POINT III

TO ALLOW THE SPORTS COMPLEX TO BE COMPLETED AS CURRENTLY PLANNED WOULD VIOLATE RIGHTS CREATED UNDER THE FEDERAL CLEAN AIR ACT AND WOULD THUS BE A DENIAL OF DUE PROCESS AND EQUAL PROTECTION.

The Federal Clean Air Act, 42 U.S.C.A. Section 1857c et seq. as amended by the "Clean Air Amendments of 1970", Pub. L. No. 91-604, 84 Stat. 1676 is the culmination of seventeen years of increasingly rigorous protection of the air we breath by the federal government. An analysis of the present federal law in this area is found in Keener, A Current Survey of Federal Air Quality Control Legislation and Regulations, 5 Natural Resources Lawyer 42 (ABA Section of Natural Resources Law, 1972) (hereinafter Keener). A history of the development of this law is given at Id. 42 to 45, which is summarized below.

The federal government's first step into this field was the 1955 Air Pollution Control Act. This authorized the Surgeon General to cooperate with other federal agencies in research to find ways to lessen pollution. In 1960 increased emphasis was placed on auto exhaust, but the thrust was still research. With the Clean Air Act of 1963, the Secretary of Health, Education and Welfare was given power to carry on research and to make recommendations as to pollution control. However, were these "recommendations" not carried out, the

Secretary could sue in federal court to enforce them if certain federal contacts or interests were involved. Amendments in 1965 added a Motor Vehicle Air Pollution Control act which required the Secretary to promulgate limits on motor vehicle emissions.

The beginning features of the current law were found in the Air Quality Act of 1967. Under this the Secretary was directed to issue "air quality criteria" and "control techniques" necessary to meet the standards set under those criteria. The states had to adopt "ambient air standards" related to these criteria and had to adopt a plan to implement these standards. "Nevertheless Congress apparently concluded that matters were not progressing at a satisfactory pace and proceeded to adopt the legislative program now to be considered [the current law, as of January, 1972]" Keener at 45.

The last statement is undeniably correct; the legislative history of the Amendments indicates that the intent of the Congress was that very high standards of air quality must be achieved in order to safeguard the country's health. These standards were to be accorded priorities quite unlike those that had previously prevailed.

> "In the Committee discussion, considerable concern was expressed regarding the use of the concept of technical feasibility on the basis of ambient air standards. The Committee determined that 1) the health of people is more important than the question of whether the early achievement of ambient air quality

> standards protective of health is technically feasible; and, 2) the growth of pollution load in many areas, even with application of available technology, would still be deleterious to public health.
>
> Therefore, the Committee determined that existing sources of pollutants either should meet the standard of the law or be closed down, and in addition that new sources should be controlled to the maximum extent possible to prevent atmospheric emission."

Sen. Rpt. No. 91-1196 on National Air Quality Standards Act of 1970, at 2, 3. Thus, if the alternatives were an unacceptable clean facility or no facility at all, it would be the latter. The same sentiment was expressed in regard to "moving sources"; the question was now what had to be done, rather than what polluters thought "could" be done.

> "The existing law requires the Secretary to establish standards on the basis of economic and technological feasibility. The proposed bill would require the Secretary to make a judgment on the contribution of moving sources to a deterioration of air quality and establish emission standards which would provide the required degree of control. The Secretary is expected to press for the development and application of improved technology rather than be limited by that which exists. In other words, standards should be a function of the degree of control required, not the degree of technology available today."

Id. at 24. It is thus clear that current federal standards are much higher and have more comprehensive reach than ever before.

> "In sum, this bill would extend the Clean Air Act of 1963 as amended in 1965, 1966, and 1967 to provide a much more intensive and comprehensive attack on air pollution. It would establish that the air is a public resource, and that those who would use that resource must protect it from abuse, to assure the protection of the health of every American."

Id. at 4. This legislation created a right to a guaranteed minimum standard of air quality to anyone residing anywhere in the United States. That no area of the United States is exempt from falling within a quality control region is made clear by 40 C.F.R. Section 51.1 (m):

> "(m) 'Region' means (1) an air quality control region designated by the Secretary of Health, Education and Welfare or the Administrator, (2) any area designed by a State agency as an air quality control region and approved by the Administrator, or (3) any area of a state not designated as an air quality control region under subparagraph (1) or (2) of this paragraph."

The several States may provide a better standard for its citizens, but they may not allow less.

> "Although the option of adopting ambient air quality standards more stringent than the national health minimum for any air quality control region is preserved for the States, the Secretary would be required to set a national minimum standard of air quality which will protect the health of persons regardless of where such persons reside. This mechanism is recommended by the committee to expedite the establishment and implementation of ambient air quality standards."

Id. at 10.

Furthermore, regardless of how stringent the new standards might have to be, the Congress clearly intended that failure to comply should be the very rare exception to the rule. See, e.g., 42 U.S.C.A. Section 1857 c-5 (e) for the narrow circumstances under which temporary extensions from the compliance deadline for air quality could be allowed upon the application of the State's Governor, and 42 U.S.C.A. Section 1857c-5(f), for the narrow circumstances under which sources of pollution may be temporarily exempt from a State's "implementation plan." That these exceptions are to be few and far betweeh is emphasized by Sen. Rept. No. 91-1196, supra at 15.

> "The Committee expects that an extension of time would be granted only as a last alternative. Therefore, the bill would provide that the court could grant relief in the paramount interest of the United States and in the public interest and general welfare of the persons in such region

> only after finding that substantial efforts had been made to protect the health of persons in such regions, and that means to control emissions causing or contributing to the failure had not been available for sufficient time or that failure was a result of a Federal facility operating under an exemption granted by the President."

It should be noted at this point that in the New Jersey-New York-Connecticut Interstate Air Quality Control Region, the area in which the Meadowlands are located, New Jersey is not meeting national standards for sulfur dioxide, particulates, carbon monoxide, hydrocarbons, nitrogen dioxide or photochemical exidants. The state has requested an eighteen month extension to develop controls to bring particulates within the standards. New Jersey State Implementation Plan to Meet National Air Quality Standards (Psa 4 to Psa 9).

Though few cases have been decided under the Act, the Courts have accorded it the obvious import of its legislative history. In Sierra Club v. Ruckelshaus, 344 F. Supp. 253 (D.D.C., 1972) the court considered two conflicting regulations that had been promulgated under the statute.

40 C.F.R. Section 50.2 (c) provides:

> "The promulgation of national primary and secondary ambient air quality standards shall not be considered in any manner to allow

> significant deterioration of existing air quality in any portion of any state."

On the other hand, 40 C.F.R. Section 51, 12 (b) provided:

> "In any region where measured or estimated ambient levels of a pollutant are below the levels specified by an applicable secondary standard, the plan shall set forth a control strategy which shall be adequate to prevent such ambient pollution levels from exceeding such secondary standard."

The Administrator had construed this latter section as authorizing a plan that would allow degradation of air quality up to but not over the level specified by the secondary standard. The Court noted the strong expressions of pro-environmental intent in the Act's legislative and statutory history, and concluded that a policy of non-degradation had been intended. Accordingly, the Court held the latter regulation invalid, 344 F. Supp. at 256.

Indeed, in this or any other environmental legislation, a court would have no choice other than to construe a statute favorably to the environmental view because of the passage of the National Environmental Policy Act, 42 U.S.C.A. Section 4331 et seq. Section 101 (2) of the Act, 42 U.S.C.A. Section 4331 (a), expresses the federal government's determination to restore and maintain environmental quality to the "overall welfare and development of man." Then, Section 102 provides that:

> "The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act. . . ."

It is thus clear that a new rule of construction and application of all federal law dealing with the environment has been created. Given the very clear rule, an examination of the statute as it applies to our case follows.

Under the Clean Air Act, it is the responsibility of the Administrator of the federal Environmental Protection Agency to determine what air pollutants are detrimental to the public health or welfare, and to establish national primary and secondary ambient air quality standards which limit the allowable concentration of the above pollutants in the outside air. 42 U.S.C.A. Sections 1857 c-3, 4. However, primary responsibility is placed on the individual states to adopt an implementation plan, 42 U.S.C.A. Section 1857c-2, which will insure that at least the federal standards of air quality will be achieved within the required time of three years from the date of the Administrator's approval of the implementation plan. 42 U.S.C.A. Section 1857c-5(A). If the state does not submit a plan acceptable to the Administrator, he may impose an acceptable one on the state. 42 U.S.C.A. Section 1857c-5(c).

The elements that such a plan must include are listed uner 42 U.S.C.A. Section 1857 c-5 (2). Of particular interest to our case is 42 U.S.C.A. Section 1857 c-5 (2) (b), which requires that the plan

> "include emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintainance of such primary or secondary standard, including, but not limited to land-use and transportation controls;"

The regulations promulgated under the statute reemphasize that transportation controls must be considered as appropriate control strategies. 40 C.F.R. Section 51.1 (n) defines and exemplifies "control strategy" as follows:

> "(n) 'control strategy' means a combination of measures designed to achieve the aggregate reduction of emissions necessary for attainment and maintenance of a national standard, including but not limited to, measures such as:
>
> (7) Measures to reduce motor vehicle traffic, including, but not limited to, measures such as commuter taxes, gasoline rationing; parking restrictions, or staggered working hours.
>
> (8) Expansion or promotion of the use of mass transportation facilities through measures such as increases in the frequency, convenience, and passenger-carrying capacity of mass

transportation systems or providing for special bus lanes on major streets and highways.

(9) Any land use or transportation control measures not specifically delineated herein."

That mass transportation, is an alternative to congested traffic in heavily traveled areas, was seen by the Congress as a necessary means of achieving the national minimum standard is illustrated in Sen. Rpt. No. 91-1196 at 2.

"Implementation of standards will require other changes in public policy:

Land use policies must be developed to prevent location of facilities which are not compatible with implementation of national standards.

Transportation policies must be developed or improved to assure that the impact of pollution from existing moving sources is reduced to the minimum compatible with the needs of each region. Construction of urban highways and freeways may be required to take second place to rapid and mass transit and other public transportation systems. Central city use of motor vehicles may have to be restricted."

* * *

"If the Nation is to continue to depend on individual use motor vehicles, such vehicles must meet high standards. The bill recognizes that a generation - or ten years' production - of motor

vehicles will be required to meet the proposed standards. During that time, as much as seventy-five percent of the traffic may have to be restricted in certain large metropolitan areas if health standards are to be achieved within the time required by this bill."

The propriety of placing the massive facility apparently proposedly the Sports Authority which, with its large number of motor vehicles, will inevitably result in tremendous traffic congestion causing levels of pollution exceeding federal primary ambient air standards, in an area where mass transit is not available, and is not being made available is put in further question by the area classification of the Hackensack Meadowlands.

"In the absence of measured data to the contrary, classification with respect to carbon monoxide, photochemical exidants, nitrogen dioxide and hydrocarbons will be Priority I for any region containing an area whose 1970 'urban place' population, as defined by the U.S. Bureau of Census, exceeds 200,000 [145] The final 1970 figures are not available nationwide, but the preliminary figures indicate there are 64 such urban place population centers in thirty-one states, the District of Columbia, and the Commonwealth of Puerto Rico.[146] In submitting proposed implementation plans for such regions, the states must include at a minimum the results of actual measurements conducted during a period of three months beginning on or about July 1, 1971, for carbon

monoxide, nitrogen dioxide, and photochemical oxidants. If such specified measurements indicate ambient levels below the Priority III maximum, then the area will be reclassified as Priority III."

Keener at 61. Footnote 146 identified Jersey City-Newark as being a "Priority I" region. It should be noted that the pollutants that are considered in this classification are carbon monoxide, photochemical oxidants, nitrogen dioxide and hydrocarbons. These are the pollutants created by internal combustion engines.

Generally speaking, in a Priority I region, the measures that must be taken to control pollution are more stringent than those of other priority regions. See generally, Keener at 59 to 67.

In view of this, other regulations should be noted. In a Priority I region, the implementation plan must not only be sufficient to abate present problems, but must be adequate to cover <u>future</u> conditions:

> "In any region where existing (measured or estimated) ambient levels of a pollutant exceed the levels specified by an applicable national standard, the plan shall provide for the degree of emission reduction necessary for attainment and maintenance of such national standard, including the decree of emission reduction necessary to offset emission increases that can reasonably be expected to result from projected growth of population, industrial activity, motor vehicle traffic, or other factors that may cause or contribute to increase emission."

40 C.F.R. Section 51.12 (a). This obligation to contain "reasonably expected" sources of pollution would seem to militate against the state itself creating a source of pollution, particularly as in this case it is known that standards are presently being violated and where the state, has not included in its implementation plan either present ambient air measurements for the meadowlands, nor taken into account development of the Sports Complex or Meadowlands.

Finally, the State cannot approach the problem as if it existed in a vacuum. Inevitably, weather conditions will be such that large amounts of pollution generated at the facility will move into other areas. The regulations require that the states take measures to prevent this.

> "The plan for each region shall have adequate provisions to insure that pollutant emissions within such region will not interfere with attainment and maintenance of any national standard in any portion of an interstate region or in any other region."

40 C.F.R. Section 51.10 (d).

Furthermore, if such extra-territorial pollution is unavoidable, measures must be taken to insure that responsible officials in adjacent areas are apprised of this fact.

> "Each plan shall provide assurances that the State agency having primary responsibility for implementing national standards in any region, or portion thereof, will promptly transmit to

> other State agencies having similar or related responsibility in the same or other States, information on factors (e.g., construction of new industrial plants) which may significantly affect air quality in any portion of such region or in any adjoining region."

40 C.F.R. Section 51, 21 (b) (2).

There is no evidence that these required steps have been taken.

It thus appears that the project as now conceived is inconsistent with the requirements of the Clean Air Act in regard to the efforts the state must make to avoid the creation of air pollution. Also, the evidence brought out at the hearings below indicate that the project will cause violation of the National Primary and Secondary Ambient Air Quality Standards. These are as follows, for carbon monoxide:

> "Section 50.8 National primary and secondary ambient air quality standards for carbon monoxide.
>
> The national primary and secondary ambient air quality standards for carbon monoxide, measured by the reference method, described in Appendix C to this part, or by an equivalent method, are:
>
> (a) 10 milligrams per cubic meter (9 p.p.m.) - maximum 8-hour concentration not to be exceeded more than once per year.

(b) 40 milligrams per cubic meter (35 p.p.m.) - maximum 1-hour concentrations not to be exceeded more than once per year."

40 C.F.R. Section 50.8. In other words, a level of 35 p.p.m. of carbon monoxide may not be exceeded for an hour more than once per year.

However, after Dr. Mahoney conceded on cross-examination that some factors in his analysis of the impact of the complex on air quality had to be changed, new figures resulted that showed that federal standards would be repeatedly violated. See SA 34 (Pa237). Under meteorological case 12, there would be two violations during the ten game football season for a parking lot usage of either 18,300 cars or 25,000 cars. Under meteorological case 4c there would be two violations with 25,000 cars (Pa238). Violations refer to violations expected only during football games. These figures are minimums since the model used to generate these figures the Martin-Tikvart Model of the Gaussian Plume, has not been validated for the Authority's use-one-hour or eight-hour concentrations in specific locations; it has been validated only for yearly averages of concentrations over large areas. Dr. Mahoney admitted this (TXXV, G.2), but claimed the model was applicable even though not validated. However, testimony that the model, developed by Dr. Martin while employed by the U. S. Environmental Protection Agency, was not applicable to this project came from Mr. Kenneth Johnson, a subpoened witness from the EPA and by Dr. Rickels and Cooper Bright. This expert testimony, impartial from Mr. Johnson, indicates that

the hearings were conducted without an applicable model, and the results from even an inapplicable model showed the probability of many violations. This is compounded by the fact (admitted by Dr. Mahoney, T. XXV, G.2) that there could be a 10% to 25% error expected in calculations of this sort. Finally, the fact that the above violations apply to only one pollutant effectively precludes the possiblity of the projects' not violating the Clean Air Act. If a state must control polluters, then a fortiori, it should not become a polluter itself. Since NEPA, a contra intention could certainly not be imparted to Congress.

It is thus clear that even if a "right" to a clean environment has not been created, at least a very strong interest has been created. See Section 101 (c) of NEPA, 42 U.S.C.A. 4331 (c):

> "The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment."

In sum, continuance of the project as now contemplated would certainly be in violation of the Clean Air Act. Of course, the Act was intended and in terms simply places an affirmative duty on the State to control polluters within the state. But, given the guidelines of the National Environmental Policy Act, supra, it would be manifestly erroneous not to find this project in violation.

It is thus seen that persons attending the complex, those living within the reach of the complex's environmental impact, and the people of the State of New Jersey as a class will have been deprived of a congressionally recognized fundamental interest if the Complex is allowed to proceed in its current form. Those affected by the pollution constitute a burdened class separate from those not so afflicted. Moreover, by not complying with a federal statute intended to protect its citizens, the State of New Jersey has deprived its citizens of the benefit of a law which inures to the benefit of other states' citizens.

Denial of a right or interest by a state without an adequate state justification and without adhering to proper procedures is a denial of due process of law and equal protection of the law under the Fifth and Fourteenth Amendments of the United States Constitution.

Typically, a statute will be in violation of the Equal Protection Clause if it creates classes upon which burdens are imposed or benefits granted in an impermissibly unequal manner. However, such classifications need not be spelled out in black letter. The question is whether there is a segment of the population upon which the law in fact has an unequally deleterious effect. In Baldwin v. Smith, 316 F. Supp. 670 (D.V. 1970), the Court considered a Vermont statute which allowed a reduction of sentence for those prisoners who would work without compensation for the prison. Thus, poor prisoners with no other source of bare subsistance funds were in fact not able to take

advantage of the sentence reduction program, whereas those with an independent source of funds were. The Court held this created an illegal classification based on wealth, saying:

> "The equal protection clause touches de facto as well as de jure regulatory classifications. 269 F.Supp. 401, 495-498. See also Michelman, The Supreme Court 1968 Term-Foreward: On Protecting the Poor Through the Fourteenth Amendment, 83 Harv. L.Rev. 7, 19-33 (1969). Although section 252 was not designed as a discriminatory tool, it does produce a de facto classification based on wealth, which classification is clearly the creature of state action."

316 F.Supp. at 677. Under similar circumstances (if fine was not paid by the time a sentence was completed this would force the prisoner to remain in jail "paying off in time" past the maximum sentence allowed) the United States Supreme Court, Chief Justice Burgher, said in Williams v. Illinois, 399 U.S. 235, 90 S.Ct. 2018, 26 L.Ed. 2d 586 (1970):

> "But, as we said in Griffin v. Illinois [351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891 (1956)], supra, 'a law nondiscriminatory on its face may be grossly discriminatory in its operation'."

90 S.Ct. at 2033.

Once a de facto discriminatory effect is found, the next question is whether it may be supported by an

adequate state interest. The standard under which statutes may be found invalid has been changing in the direction of protecting the individual right.

> "No longer are technical distinctions between criminal/civil or right privilege being accepted. In its place is an analysis of the importance to the individual of the interest being regulated."

Haule, Compelling State Interest vs. Mere Rational Classification: The Practitioner's Equal Protection Dilemma. 3 Urban Lawyer 375 (1971). The United States Supreme Court has recently stated the rule in terms of a continuum:

> "Though the latitude given state economic and social regulations is necessarily broad, when state statutory classifications approach sensitive and fundamental personal rights, this Court exercises a stricter scrubing [citing cases]... The essential inquiry in all the foregoing cases is, however, inevitably a dual one: What legitimate state interest does the classification promote? What fundamental personal right might the classification endanger?"

Weber v. Aetna Casualty & Surety Co., U.S. 92 S.Ct. 1400, 1405, 31 L.Ed. 2d 768 (1972).

It is submitted that the state's interest in promoting this project is meagre indeed. On the other hand, in view of the statements of the legislatures of both the United States and New Jersey, the right or interest of the people to be protected is high indeed.

Finally, the "right" or "interest" taken need not be specifically pecuniary to be "property" that cannot be taken without due process of law. For example, the right to a license to practice law for qualified persons is a protected right even before the right becomes vested by admission to the bar. Willner v. Committee on Character and Fitness, 373 U.S. 96, 83 S.Ct. 1175, 10 L.Ed. 2d 224 (1963).

In sum, a right has been improperly taken, creating a de facto class of citizens on whom the impact of the project weighs discriminatorily. This is a denial of due process of law and of equal protection of the law.

* * *

Excerpts of Hearing Officers Recommendations

STATE OF NEW JERSEY

HACKENSACK MEADOWLANDS
DEVELOPMENT COMMISSION

IN THE MATTER OF THE HEARINGS
HELD ON THE PROPOSED SPORTS
COMPLEX IN THE HACKENSACK
MEADOWLANDS
(JULY 10, 1972 THROUGH AUGUST 11, 1972)
HACKENSACK, N.J.

HACKENSACK MEADOWLANDS
DEVELOPMENT COMMISSION
1099 WALL STREET WEST
LYNDHURST, N.J.

DEPARTMENT OF
ENVIRONMENTAL PROTECTION
JOHN FITCH PLAZA
TRENTON, N.J.

HEARING OFFICERS' REPORT & RECOMMENDATIONS

BACKGROUND STATEMENT

The New Jersey Sports and Exposition Authority Law (Chapter 37, Laws of 1971) (N.J.S.A. 5:10-1 et seq.) created the New Jersey Sports & Exposition Authority ("Authority") and empowered it "to

determine the location, type and character" (Section 5x) of a sports and exposition complex to be located "In the Hackensack Meadowlands upon a site not to exceed 750 acres ..." (Section 6). Site selection was to be made by the Authority: "notwithstanding any land use plan, zoning regulation, building code, or similar regulation heretofore or hereafter adopted by the State, any municipality, county, public body political and corporate, including, but not limited to the Meadowlands Commission, or any other political subdivision of the State, provided that the authority shall consult with the Meadowlands Commission before making any determination as to the location, type and character of the project." (Section 5x)

During the hearings, the scope of the Department of Environmental Protection ("DEP") and Hackensack Meadowlands Development Commission's ("Commission") authority concerning the hearings was the subject of extensive debate. Counsel for the Authority took the position that the proceedings were a "consultation" while opposing counsel were of the view that the New Jersey Supreme Court intended for the hearing agencies full power to approve or disapprove the proposed site. We believe that the Supreme Court's opinion, in N.J. Sports & Exposition Authority v. McCrane, 61 N.J. 1 (1972), vested in the Commission and the DEP broad discretion to approve or disapprove the Authority's selection of a complex site and to pass judgment on the operational characteristics of the complex. See Majority Opinion at p. 33, and Concurring Opinion of Justice Hall at pp.64-66. This position is further bolstered by reference to Justice Francis's

holding that the Authority is under an obligation to submit its proposed site to the hearing agencies in a more formal manner, thereby rejecting the Authority's contention at oral argument before the Supreme Court that the prior conferences held before the site was selected satisfied the requirements of statute.

In the latter part of May, 1972, the Authority instituted suit for a declaratory judgment as to the validity of the statute. Following this, additional parties were permitted to intervene and three additional law suits were filed challenging the constitutionality of the statute. After consolidating all suits, Judge Pashman, sitting in Superior Court, Law Division, Bergen County, sustained the constitutionality of the statute 119 N.J. Super. 45 (1971).

Judge Pashman held that determination of constitutionality could be made prior to a determination being made as to whether or not the complex would affect the environmental balance present in the Hackensack Meadowlands.

After granting direct certification and after hearing oral argument, the Supreme Court, on May 12, 1972, affirmed the decision of the Superior Court. All justices were of the view:

> . . . That an obligation has been imposed on the Authority to present its proposal for site location to the Meadowlands Commission and the Department of Environmental Protection, and seek their opinion that in using such site the

> 'delicate environmental balance of the Hackensack Meadowlands may be maintained and preserved.' This presentation should be made after public notice of the time and place thereof, and actual notice to the parties to the present action. (61 N.J. 1 at 33)

On June 9, 1972, the Department of Environmental Protection and the Hackensack Meadowlands Development Commission issued a public notice which indicated that a joint hearing on the Sports Complex would commence on July 10, 1972 and continue until concluded the following matters would be considered at the hearings:

> (1) The location, type and character of the sports and exposition project which the New Jersey Sports & Exposition Authority is authorized and empowered, and proposes to construct in the Hackensack Meadowlands; and
> (2) The 'ecological factors' in the maintenance and preservation of the delicate environmental balance of the Hackensack Meadowlands in undertaking the Sports and Exposition project.

The Sports Authority was directed to file its proposal and environmental impact statement and exhibits with the two hearing agencies on or before June 23, 1972. Opponents were directed to file statements in opposition within ten days of the filing of the Authority's proposal. All parties were advised that they could "call witnesses to confirm and further amplify the position of such part as reflected in papers filed on behalf of such party . .,"

An additional notice dated June 23, 1972, was sent to all attorneys appearing indicating certain documents and materials filed with the Commission which were available for inspection and on which the agencies may rely and which would be accepted as evidentiary without further proof by the Hearing Agencies.

The hearings began on July 10, 1972, and concluded five weeks later, on August 11, 1972. The Meadowlands Commission designated Gary S. Rosensweig, Esq. and the Department of Environmental Protection designated Robert L. Solan, Esq. as hearing officers. Malcolm S. Zlotkin, Esq. was appointed by the Attorney General as Special Counsel to represent the Hearing Agencies throughout the hearings.

The attorneys appearing and their clients were: James C. Pitney representing the New Jersey Sports & Exposition Authority, T. Girard Wharton representing the Treasurer of the State of New Jersey and the public interest, Robert N. Wilentz representing Monmouth Park Jockey Club, Alfred A. Porro representing the National Audubon Society and others, Ralph Chandless representing the Twp. of South Hackensack and others, Frederick Mezey representing New Jersey Citizens for Clean Air and others, and William Gorgone (filed an appearance but did not attend) representing the Borough of East Rutherford. Numerous other interested groups and individuals also appeared or submitted written statements.

The hearings were conducted pursuant to the rules and procedures of the Administrative Procedure Act (N.J.S.A. 52:14B-2 et seq.). All parties were informed

that following the completion of the hearings, the hearing officers would prepare a joint report containing proposed findings and conclusions which would then be filed with the Hearing Agencies and all parties appearing. Exceptions and objections to the hearing officers' report could then be filed with the Commission and the DEP within ten days of receipt of the report. Thereafter, the Commission and Commissioner Richard J. Sullivan will render a written decision accepting, rejecting or modifying the report of the hearing officers.

* * *

G. TRANSPORTATION AND AIR QUALITY

1. TRANSPORTATION AND MASS TRANSIT

The proposed Sports Complex site is located in an area already experiencing large volumes of traffic. It was estimated that the amount of traffic will grow at the rate of eight per cent per year from now until 1975. We accept this figure which was not seriously challenged, as reasonable for purposes of the discussion. Assuming this rate of growth and considering the number of vehicles which would be attracted to the site for a given program certain projections were presented by the Authority concerning the capacity of the existing roads to handle this traffic. These projections set forth in Exhibit SA-5, Section XI, assumed that 18,330 automobiles and 400 buses would park at the site on the day of a football game. It was explained that this figure was arrived at by taking the number of attendees and dividing by a mix of the number of people per car and per bus, which was three and 50 respectively (T. VIII, p. C-3) It seems to us

that the mix of cars and buses was computed by resorting to data available regarding attendance at Yankee Stadium and Shea Stadium in New York. It is not clear from the record whether this method would be accurate in projecting figures for a stadium in New Jersey due to the availability of subway facilities in New York. In other words, it is conceivable that more patrons would avail themselves of bus transportation than projected due to the current lack of alternate public transportation.

Throughout the course of the hearings, serious doubt arose concerning the accuracy of the use of the 18,330 figure. Dr. Rickels ventured that the figure might be more like 22,000. There is no question that the maximum number would be 25,000 because this is the total number of spaces specified in the lease agreement between the Sports Authority and the New York Football Giants. (T. VIII, p. C-33.) Dr. McCormick agreed and we find that if 25,000 cars used the spaces there would be a greater impact on traffic than there would be using the 18,330 figure.* No party offered any evidence as to what this impact would be, however.

Using the 18,330 figure it was projected that:

(1) On Sunday, 4:00 p.m. to 5:00 p.m., after football games, at 18,000 cars, traffic overloads will occur:

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* More cars would also mean more emissions, and therefore increase potential for air pollution. See discussion, infra.

Excerpts of Hearing Officers Recommendations

(a) At the west branch of the N.J. Turnpike spur north of Route 3 by 2,400 cars;

(b) At the west branch of N.J. Turnpike, south of Route 3 by 400 cars;

(c) At the Washington Avenue north of Paterson Plank Road, by 100 cars. (Ex. SA-5, pp. XI, 5-11.)

(2) Baseball traffic, weekend afternoon games during August, the most "serious problems" with 15,000 cars and 200 buses exiting while 6,500 approach the horseracing event. These figures are "substantially worse" than the previous condition (Sundays, 4:00 - 5:00 p.m. football) and are not reported in numbers in the report. Rather a recommendation is made that baseball and racing not be allowed to be scheduled simultaneously. (Ex. SA-5, pp. XI - 7-8.)

"It is unlikely," the report says, "that any improvement, other than substantial rail access, could be achieved." (Ex. SA-5, p. XI - 9.)

(3) Baseball, weekend 4:00 - 5:00 p.m., 15,000 cars and 200 buses will overload:

(a) At the western spur of the N.J. Turnpike north of Route 3 by 1,144 cars;

(b) Western spur of the N.J. Turnpike, south of Route 3, by 156 cars;

(c) Route 3 East, by 400 cars;

(d) Route 3 West, by 380 cars; with a recommendation (Wilbur Smith) is to divert traffic to the eastern spur when possible. (Ex. SA-5, pp. 6, 13).

We find that there is potential for the development of mass transit rail facilities in the area of the proposed sites. There is no dispute that a main line of the Erie-Lackawanna Railroad runs by the site approximately 600-700 feet to the west of Berry's Creek. (T. XVIII, p. D-12 and Ex. SA-21.) The Line is currently used for passenger traffic. (IBID at D-8). In spite of Mr. Chandless' contention that mass transit at Site 6 would be an "impossibility" (T. VII, p. B-9), Mr. Job, his witness, later admitted that this Erie-Lackawanna Line crossing the meadows so close to the proposed site goes directly to the Erie's Hoboken Station (T. VII, p. D-15) and also crosses the Penn Central main line. (IBID.) Further, he indicated that the Erie-Lackawanna station in Hoboken is directly accessible to the PATH station which links Newark, Jersey City and New York. (IBID at D-7 and D-8.) The immediate outlook is not extremely promising even though certain recommendations were made by Dr. McCormick (Ex. SA-5, p. 85) due to the pending bankruptcy of the Erie-Lackawanna Railroad. (T. VIII, p. D-37.) Certainly additions to the tracks would be a necessity. (T. VI, p. C-11.)

It is not entirely clear as to what steps the Authority may legally take to develop mass transit. The terms of the lease with the Giants talk of "best efforts" to promote transit facilities. (IBID at C-14.) There is no question that at the very least the development of the

rail line described above (which was termed as "best or optimal connection" IBID at C-15) would be highly desirable. Some would call it essential. Nevertheless, every effort should be made to develop such a system at the earliest possible date. We recognize that this obligation cannot be imposed solely on the Authority. State and federal agencies as well as the railroads themselves must be brought together. The end sought to be achieved would obviously reduce traffic congestion and relieve the threat of air pollution, discussed infra.

2. AIR QUALITY

The data and testimony offered at the hearing concerning the impact of the Complex on the quality of the air and its effect on visitors to the Complex, residents in the region, transients through the District and on plants and wildlife consumed an inordinate amount of time and documentation, most of which was highly technical, partially incomplete and often contradictory.

The Draft Impact Assessment contains an assessment of air quality as affected by a fully developed Sports Complex in the Year 1990 (the year all facilities are expected to be operational). (Ex. SA-5, pp. 86-87.)

The Hearing Agencies find that omission of data by the Sports Authority on air quality for the period 1975-1990 in the Draft Impact Assessment (Ex. SA-5) was primarily responsible for the undue consumption of time during the hearings. However, Mr. Mezey, by

failing to file a "counter statement" within the specified time as called for in the public notices of the Hearing Agencies, must be also held partially responsible for the undue consumption of time. As was brought out during his extensive cross-examination of Drs. McCormick and Mahoney, Mr. Mezey was primarily concerned with the possible adverse air quality impact by the Complex for the Years 1975- 1990.

Two types of primary sources for air pollutants were discussed. Primary source one -- site facility emission; primary source two -- motor vehicle emissions.

Site facility emissions from the football stadium, horserace track, hotel, theme park and baseball stadium can be expected to contain sulphur oxides and total suspended particulates if fossil fuel were to be utilized. Current plans specify that all heating, cooling and cooking will utilize electricity (Ex, SA-5, p. 64), therefore no site facility emissions are anticipated. No method of calculating responsibility for air pollution caused by the off-site generation of electrical energy by a public utility directly attributable to the user has been developed and no findings on these secondary effects can be made by the Hearing Agencies. The Hearing Agencies find that site facility emissions will be of minor significance on the air quality on site and regionally.

Motor Vehicle emissions attributable to the Sports Complex for the Year 1990 were the subject of a study by the Environmental Research and Technology firm as a subcontractor to Jack McCormick and Associates. (Ex. SA-5, p. XII-1.) The five pollutants examined were:

Total suspended particulates (TSP); sulphur dioxide (SO_2) carbon monoxide (CO); total hydrocarbons less methan (HC); and nitrogen oxides (NOx). (Ex. SA-5, p. 86.)

ERT employed a version of the Martin-Tickvart (MARTIK) dispersion model (gaussian plume) modified to improve computational accuracy for receptors near source areas, to permit trade- offs between accuracy requirements and computation time, and to permit improved flexibility in the treatment of rectangular area sources of any size and orientation. (Ex. SA-5, p. XII-95.) The MARTIK model and modeling procedures utilized by ERT in this case are identical to those being employed by ERT under contract to the New Jersey Department of Environmental Protection.

The results and conclusions of the ERT study for the Year 1990 as to the probable negligible effect by the Complex on the region indicate that in all cases the applicable one-hour standards (and the equivalent standards) will not be exceeded for Co, NOx and SO_2 on site (Ex. SA-5, pp. 88-90) were substantially unrebutted. Therefore, the Hearing Agencies find that these projections and assumptions are credible and reasonable and accordingly are adopted. We further find that the MARTIK model employed in this study is based on sound scientific methodology and can be categorized as meeting the "highest state of the art."

As a result of the repeated insistence of Mr. Mezey and Mr. Porro that the effect on air quality during the 1975-1990 period could not be ignored, the Sports Authority presented a rebuttal witness, Dr. James Mahoney. (i.e. T. XVI, D-2ff and T. XX, p. E-53, and T. XX, p. E-62, 63.)

Dr. Mahoney, an officer of ERT, had prepared under his direction a supplemental study (Ex. SA-28) to the "Air Pollution Impact Study" found in the Draft Impact Assessment (Ex. SA-5, Sec. XII). This study dealt specifically with the time period corresponding to the earliest anticipated operation of the football stadium (1975) examining the worst case conditions for motor vehicle exhaust emissions (Ex. SA-28). In addition to computations for 18,330 vehicles, additional computations were made for 25,000 vehicles (full parking lot capacity). (Ex. SA-28). In addition to computations for 18,330 vehicles, additional computations were made for 25,000 vehicles (full parking lot capacity). (Ex. SA-28.) The primary emphasis of this supplemental study was to ascertain the probability factors of "worst case meteorological conditions" at the Complex site during major sporting activities, (i.e. football games).

Testimony was substantially unrebutted as to the motor vehicle emission pollutants, except carbon monoxide, exceeding state and federal standards. These state and federal standards are shown in Exhibit SA-5, p. XII-5, and Exhibit SA-24, Federal Register, Volume 36. The Hearing Agencies find that the Sports Complex will not interfere with the State of New Jersey achieving

the National Ambient Air Quality Standards for sulfur dioxide, particulates, and oxidants. We additionally find that New Jersey is not required to achieve National Air Quality Standards for hydrocarbons unless oxidant standards are not achieved by 1975 (Ex. SA-24, Sec. 420.14, Art. C.4). Since New Jersey will achieve oxidant standards by 1975 the hydrocarbon standard does not apply. The Hearing Agencies can therefore make no findings in this regard.

The Hearing Agencies find that under conditions of extreme atmospheric stagnation and high football activity, motor vehicles in the Complex could conceivably cause the one hour National Ambient Air Quality Standard for carbon monoxide to be exceeded. Statistically, however, the condition is not likely to occur more than once per season during a football event at the following locations:

(1) Inside Parking Lot —

The maximum one hour average National Ambient Air Quality Standard for carbon monoxide will probably be exceeded under conditions of extreme atmospheric stagnation within the Stadium parking lot once per season during a football event.

(2) Area Immediately Outside the Confines of the Parking Lot —

The one hour average National Ambient Air Quality Standard for carbon monoxide will probably be exceeded up to a distance of 1,000 meters or 0.6 of a mile from the center of the Complex once per season during one football event.

(3) Nearby Residential Area—

The air quality in the Town of Secaucus, approximately two miles from the center of the Complex will not exceed the one hour National Ambient Air Quality Standard for carbon monoxide regardless of atmospheric stagnation conditions or the level of activity in the Complex.

We additionally find that in the case of nitrogen dioxide the testimony was insufficient in order to arrive at a meaningful interpretation; (see Ex. A-22, which casts serious doubt upon the validity of the federally established measurement techniques for nitrogen dioxide) however, it appears by comparing Dr. Mahoney's chart (Ex. SA-34) and Table II in SA-5, p. XII - 7 that the federal air quality standard for nitrogen dioxide will not be exceeded.

Dr. McCormick suggested certain procedures and methods of alleviating the potential impact of motor vehicles arriving and leaving the site. (Ex. SA-5, p. 85.) These include special inducements of preferred parking, prices, or penalties such as staged parking (last in–last out), and higher rates. Dr. Mahoney concurred (T. XXV, pp. G-6ff).

One of the assumptions of the "worst case" approach was that all motor vehicles would start their engines simultaneously and would idle for their entire stay in parking lot (Ex. SA-5, p. XII-12). Dr. McCormick recommends phased release of vehicles from

parking lots. (Ex. SA-5, p. ix, pp. 84-85, and T. I, p. 60.)

The Hearing Agencies find that the expertise and competency of Dr. James Mahoney in the field of air pollution analysis and his testimony in these hearings were never convincingly refuted or rebutted. His ready admission to errors on the part of ERT in certain computations and his prompt correction and submission of such corrections manifested his integrity, and therefore enhanced the confidence of the Hearing Agencies in his testimony and ultimate findings.

CONCLUSIONS AND RECOMMENDATIONS

1. The State, in recognizing that the special array of problems in the Hackensack Meadowlands required special solutions, elected to assume the leadership in the correction of long-standing abuses and become the planning agent for a more desirable set of outcomes that those which had already made their predictive mark on the land. Both a regional conceptualization of the problems and a regional execution of their solutions were deemed necessary.

When the special, if numerically limited difficulties in traffic congestion specifically attributable to the Sports Complex are aggregated to the predictable increases foreseeable in the immediate region, the occasion of a state-sponsored Sports Complex to stimulate the appearance of rail rapid transit in this most densely utilized portion of the State should not be by-passed at this time. As transport conditions become

more congested in this area, their solutions become less tractable.

In order to alleviate major traffic congestion in the region the Sports Authority, as the instrumentality of the first mass crowd gathering facility within the District, should act as a catalytic agent in encouraging the timely establishment of a comprehensive public mass transportation system. It is suggested that the Sports Authority participate in meetings among appropriate officials from the New Jersey Department of Transportation, the Port of New York and New Jersey Authority, the Tri-State Regional Planning Commissions and the Hackensack Meadowlands Development Commission in order to explore alternative methods to accomplish this stated goal.

2. Planning and design of additional facilities contemplated at the Complex beyond those which were the subject of the hearings should only proceed in concert with planning, design and operation of such public mass transportation facilities.

3. The Authority shall immediately begin negotiations with bus carriers in order to obtain assurances that bus transportation to the Complex for football and race track events will be available.

4. An air pollution monitoring system, designed in accordance with specifications recommended by the Department of Environmental Protection and to be fully integrated into the State system, shall be ordered, purchased and installed by the Sports Authority as soon

as practicable, but in no case less than one year before any sports facilities are operable so that a record of base readings may be obtained.

5. The Sports Authority shall immediately undertake the necessary studies to establish facilities and operational procedures such as, but not limited to, phased release parking, in order to prevent any possible exceeding of federal air quality standards (especially carbon monoxide).

Decision of Commissioner of New Jersey Department of Environmental Protection

The Commissioner, Department of Environmental Protection and the Hackensack Meadowlands Development Commission after careful consideration of the entire record in this matter, including the exceptions and objections filed by the parties to the Hearing hereby accept and adopt the Hearing Officers' Report of September 25, 1972 except as hereinafter set forth:

1. We accept the delineation of the Berry's Creek Marsh as shown on N.J. Sports and Exposition Authority, "Revised Site Master Plan"drawing No. S/SK 100/A dated 10/9/72 as meeting the conclusions and recommendations contained in the Hearing Officers' Report, No. 3, p.23 and No.10, p.66.

2. In the matter of continuing participation by the Hearing Agencies, it is expressly intended to pertain to the implementation of those conditions and recommendations set forth in the Hearing Officers' Report. In so far as operational participation by the Hearing Agencies, it is intended primarily in the areas of solid waste disposal and recycling, storm water disposal, sewage disposal, potable water supply, noise abatement and air quality monitoring and control. 3. With regard to Conclusions and Recommendation No.4 on page 34 and No.22 on page 68, such limitation applies only in the event that neither the proposed on-site sewage treatment facility nor the proposed equalizing and/or holding tanks solve the sewage disposal problem created by any single sporting event on the site.

Decision of Commissioner

4. In the matter of ownership, control and restoration of the Berry's Creek Tidal Marsh (Conclusion and Recommendation No.1, pp.22-23; No.8, p.65; No.2, p.23; No.9, p.66) and the establishment and operation of an environmental education center (No.6, p.24; No.13, pp.66-67) the New Jersey Sports and Exposition Authority may instead, at its option, acquire privately held right title and interest in the Berry's Creek Tidal Marsh, restore the Marsh as specified, construct and establish the Environmental Education Center as specified. At any time subsequent to the acquisition of the privately held right, title and interest, the Sports Authority shall vest title and operation with the Department of Environmental Protection at no cost to the Department. The New Jersey Sports and Exposition Authority shall annually provide sufficient funding for the operation and maintenance of this facility.

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION

s/ Richard J. Sullivan
Richard J. Sullivan, Commissioner

HACKENSACK MEADOWLANDS
DEVELOPMENT COMMISSION

s/ Lawrence F. Kramer
Lawrence F. Kramer, Chairman
Dated: 10/16/72

Opinion of the Supreme Court

SUPREME COURT OF NEW JERSEY
A-86/87 September Term 1972

IN THE MATTER OF THE ENVIRONMENTAL HEARINGS ON THE PROPOSED SPORTS COMPLEX IN THE HACKENSACK MEADOWLANDS.

Argued December 18, 1972 – Decided February 5, 1973

On appeal from the Final Decision of the Department of Environmental Protection and the Hackensack Meadowlands Development Commission.

Mr. Frederick C. Mezey argued the cause for appellants New Jersey Citizens for Clean Air, Inc., et al (Messrs. Mezey & Mezey, attorneys).

Mr. Ralph W. Chandless argued the cause for appellants Township of South Hackensack, Louis Montenegro, Philip Mellilo, Jr. and Board of Education of the Township of South Hackensack (Messrs. Chandless, Weller & Kramer, attorneys).

Mr. James C. Pitney argued the cause for respondent New Jersey Sports and Exposition Authority (Messrs. James C. Pitney, John W. Bissell and Lawrence B. Litwin, on the brief; Messrs. Pitney, Hardin & Kipp, attorneys).

Opinion

Mr. Malcolm S. Zlotkin, Special Counsel for New Jersey Department of Environmental Protection and Hackensack Meadowlands Development Commission, filed a Statement in Lieu of Brief.

PER CURIAM.

This is an appeal, on direct certification by this Court, from a decision of the Department of Environmental Protection and the Hackensack Meadowlands Development Commission, dated October 16, 1972, approving the selection by the New Jersey Sports and Exposition Authority of a site in the Hackensack meadowlands for the establishment of a sports and exposition complex. The decision found that the proposed site was the most suitable location "from an environmental point of view" and that considering all relevant factors, a rational basis existed for its selection.

In New Jersey Sports & Exposition Authority v. McCrane, 61 N.J. 1 (1972) this Court upheld the constitutionality of the New Jersey Sports and Exposition Authority Law, N.J.S.A. 5:10-1, et seq. In substance this law provided for the establishment of a sports and exposition complex in the Hackensack meadowlands and created the Sports and Exposition Authority to carry out the legislative purpose. Our opinion sets forth the broad outlines of the project, the powers conferred and obligations imposed on the Authority, and the means provided for financing the development.

Opinion

In upholding the constitutionality of the statute we noted that section 23 thereof required the Authority, in undertaking the meadowlands complex, to consult with the Hackensack Meadowlands Development Commission and the Department of Environmental Protection with respect to the ecological factors constituting the environment of the Hackensack meadowlands "to the end that the delicate environmental balance of the Hackensack meadowlands may be maintained and preserved."* We held that the informal conferences which the Authority had with the named agencies during its consideration of a site for the complex did not satisfy the purpose of the statute.

It was unanimous view of all of the members of the Court that the statute imposed an obligation on the Authority:

> "to present its proposal for site location to the Meadowlands Commission and the Department of Environmental Protection, and seek their opinion that in using such site the 'delicate environmental balance of the Hackensack meadowlands may be maintained and preserved.'" 61 N.J. at 32.

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* The statute represents a legislative decision that the complex be located in the Hackensack meadowlands. The consultation called for by section 23 is to the end that the site selected by the Authority will be the most suitable from the point of view of maintaining and preserving the delicate environmental balance of the Hackensack meadowlands.

Opinion

Accordingly, while upholding the constitutionality of the Act, we remanded the matter for a hearing, on notice to the public and the parties to the action, with opportunity for the Authority and all interested parties to present their views on the subject. Any party desiring review of the administrative decision was given leave to apply for direct certification by this Court.

We recognized that the consultation directed by the statute was not itself a quasi- judicial process, but since the end product could then be attacked judicially on an appeal to the Appellate Division, we suggested that the named agencies might well permit the parties to appear before them to make a record which would suffice for the appellate review, thereby obviating the time delay which a two-step affair would entail. The agencies accepted that suggestion and the record made is adequate for judicial review, the attacking parties of course have the conventional burden of demonstrating, not that the agencies' action was merely erroneous, but that it was arbitrary.

Pursuant to the remand, the Authority had a study made of the potential environmental impact of the construction and operation of the proposed complex. This study confirmed the selection of the site in question as the best from an environmental standpoint. However, it made numerous recommendations of changes in the project "to minimize the impact of site development and to enhance the environment of the area." The major recommendation made was to revise the Site Plan to preserve and restore approximately 130

acres of tidal marsh in the vicinity of Berry's Creek. These recommendations were accepted by the Authority and a Revised Site Master Plan adopted.

The revised plan, and the study on which it was based, were the subject of the administrative hearing which extended from July 10, 1972 to August 11, 1972.

The decision, while approving the site selection and proposed use from an environmental point of view, imposed additional requirements on the Authority to protect and enhance the environment of the area. These included specific alternative proposals for the handling of sewage, establishment of a monitoring system to detect air pollution and specific proposals to prevent the possible exceeding of federal air quality standards, and initiation of plans for providing mass transit facilities. While the hearing agencies made no express determination that "the delicate environmental balance of the Hackensack meadowlands" will be maintained and preserved, they did find that the proposed site was the most suitable location "from an environmental point of view."

We have reviewed the comprehensive record made at the remand hearing. We conclude (1) that the kind of hearing we suggested was held, and that all interested parties had a fair opportunity to present their views; (2) that the decision approving the site selection and proposed use from the point of view of maintaining and preserving the delicate environmental balance of the

Hackensack meadowlands has not been shown to be arbitrary.

A considerable part of the hearing was concerned with projections of the impact of the complex on air quality from the broad point of view of the public health. While the statutory obligation imposed on the Authority to consult with the named agencies was concerned only with the "delicate environmental balance" of the meadowlands, our remand was sufficiently comprehensive to include the broader issue and the hearing agencies rightly concerned themselves with it.

The brief filed by appellants "Citizens for Clean Air" stresses the proposition that the location of the proposed complex in the Hackensack meadowlands is ill-considered and unwise. However, the decision to so locate the complex was made by the Legislature and, as we noted in our original opinion, 61 N.J. at 8, this Court cannot concern itself with the wisdom or policy of the legislative action. It is also argued that projections of air pollution emanating from the completed project indicate that standards established under the Federal Clean Air Act (42 U.S.C.A. Section 1857, et seq.) will be violated and will result in a denial of due process and equal protection, as well as infringe on the implicit constitutional right to a healthful environment. As a corollary, the argument is made that it is beyond the police power of the State to allow the construction of a project demonstrably dangerous to the public health.

Opinion

These contentions lack validity. It has not been demonstrated that the complex will be dangerous to the public health. Careful consideration was given to the question of air pollution. The record indicated that on-site facility emissions from the complex will be of minor significance on air quality and that the real concern was with motor vehicle emissions. As to this, a comprehensive study was made which included projections and predictions as to air pollution for the year 1990 when a completed project is contemplated. The study indicated that applicable one-hour standards (and their equivalents) will not be exceeded for the three major pollutants on site. The hearing agencies found this study to be substantially unrebutted, the projections and assumptions therein credible, and adopted the same.

Additional evidence was presented as to potential air pollution in 1975 when race track, football field and parking area facilities will have been completed and become operational.

The hearing agencies found that the complex will not interfere with the State of New Jersey achieving the national ambient air quality standards for sulphur dioxide, particulates, and oxidents (since oxident standards will be achieved by 1975 the hydrocarbon standard does not apply). It was also found that under conditions of extreme atmospheric stagnation and high football activity, motor vehicles in the complex could conceivably cause the national standard for carbon monoxide to be exceeded, but not more than once per season. As heretofore noted, the approval given the site

and proposed use calls for establishment of a monitoring system to detect air pollution with alternative specifics to achieve and maintain acceptable air quality.

Actually, it is highly speculative to try and estimate air pollution in 1975 when the project will have completed its race track, football stadium and parking area, or in 1990 when the entire complex is scheduled for completion. There are too many variables in the overall picture.

Certainly the Sports Authority will be subject to the Federal Clean Air Act. This act provides for the establishment of national air quality standards through the office of a Federal Administrator, but places the primary responsibility on each state for assuring air quality within its geographical area by requiring it to adopt an implementation plan to attain the standards established by the Federal Administrator. New Jersey has adopted such a plan which has been approved by the Federal Administrator. Attainment of the national standards must be achieved by 1975. The act empowers the Federal Administrator to bring suit directly in the federal court to restrain air pollution in violation of the established standards should any state fail to enforce its implementation plan effectively.

The record indicates that the National Emission Standards Act (42 U.S.C.A. Section 1857 f-1 to f-8) mandates virtual elimination of emissions of carbon monoxide in all automobiles manufactured during and

after model year 1975.* The overall result is a joint federal and state attack on air pollution to the end that federal ambient air quality standards will be attained and maintained. In the development and operation of the sports and exposition complex the Authority must conform to these standards.

It is to be noted that the decision of the hearing agencies calls for their continuing participation, primarily in the areas of solid waste disposal and recycling, storm water disposal, sewage disposal, potable water supply, noise abatement and air quality monitoring and control, to the end that the conditions and recommendations set forth in the decision will be effectuated.

The remaining points raised by appellants are basically procedural in nature. We have considered all of them and conclude that the requisites of a fair hearing were satisfied and appellants afforded due process.

Affirmed.

HALL, J., concurs in result.

A TRUE COPY

s/ Florence R. Peskoe
ACTING CLERK

* The National Environmental Protection Agency has recently issued its regulation requiring oil companies to make one grade of lead-free gasoline generally available throughout the country by July 1974. A second regulation requiring the gradual reduction of the lead content of all other grades of gasoline over a three year period is under study. The New York Times, Dec. 28, 1972, at p. 62, col. 1.

Petition for Rehearing

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SUPREME COURT OF NEW JERSEY

In the Matter of The
Environmental Hearings on
The Proposed Sports Complex
in the Hackensack Meadowlands

M-106 September
Term 1972
Civil Action

On appeal

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of New Jersey

The petitioners, Citizens for Clean Air, et al, present this petition for a rehearing of the above cause and in support thereof, respectfully show:

1. The appeal in this case was argued before this Court on December 18, 1972.

2. On February 5, 1973, the Court rendered its decision in favor of the respondent and against the petitioners, affirming the findings of the Division of Environmental Protection and the Hackensack Meadowlands Development Authority.

Petition for Rehearing

The Petitioner seeks a rehearing primarily based on the following:

A. The Court's opinion is based on the assumption that New Jersey has an approved implementation plan and that state and federal cooperation would assure that the Federal Clean Air Act standards would be met. The basis for this assumption was removed by the U.S. Court of Appeals for the District of Columbia Circuit decision on January 31, 1973 having the effect of voiding the New Jersey Implementation Plan.

B. This Court assumed that the original implementation plan included the effect of the Sports Complex. In fact, as indicated by the implementation plan itself and testimony from a representative of the Environmental Protection Agency the implementation plan did not include any information concerning the Meadowlands or the Sports Complex.

C. The Court assumed that the federal emission standards stipulation would be met and that, therefore, the mandate of the Federal Clean Air Act would be complied with in 1975. As a matter of fact, there is great doubt as to whether or not technically the standards can be complied with and EPA action on February 14, 1973 in fining a major automobile manufacturer for unauthorized adjustments to test engines to give the illusion of compliance with federal standards shows the practical difficulty in causing by legal edict compliance with standards depending upon the perversity of machines.

D. Regulations promulgated by EPA, (40 C.F.R. Section 50.18) require that states adopt a new source permit law to license new statutory sources such as the Sports Complex. New Jersey is presently without such a new source permit law although same is required under the Clean Air Act.

E. New Jersey is presently without an approved implementation plan. It is the contention of these Petitioners that allowing construction of the Sports Complex under these circumstances will result in the creation of a major source of pollutants not accounted for by the state involving the expenditure of enormous sums of money which may be totally wasted if the subsequent implementation plan requires major modifications. A detailed elaboration of the above points follows:

ARGUMENT

The Court held that

> "Certainly, the Sports Authority will be subject to the Federal Clean Air Act. . . This act . . . places the primary responsibility on each state for assuring air quality within its geographical area by requiring it to adopt an implementation plan to attain the standards established by the Federal Administrator. New Jersey has adopted such a plan which has been approved by the Federal Administrator. Attainment of the national standards must be achieved by 1975. . .

> The record indicates that the National Emission Standards Act (42 U.S.C.A. Section 1857 f-1 to f-8) mandates virtual elimination of emissions of carbon monoxide in all automobiles manufactured during and after model year 1975* [*footnote omitted] . The overall result is a joint federal and state attack on air pollution to the end that federal ambient air quality standards will be attained and maintained. In the development and operation of the sports and exposition complex the Authority must conform to these standards". Opinion, at 7, 8.

As to the factual contentions of the parties, the Court affirmed, inter alia, the agencies' findings as to the air pollution impact of the complex:

> "The hearing agencies found that the complex will not interfere with the State of New Jersey achieving the national ambient air quality standards for sulphur dioxide, particulates, and oxidents (since oxident standards will be achieved by 1975 the hydrocarbon standard does not apply)." Opinion at 7.

The Court also agreed with the agencies that the national standard for carbon monoxide would not be exceeded more than once per year. Id.

From this summary it appears that the Court has been led to believe that the citizens of New Jersey are protected by a valid implementation plan that will protect them from automotive pollution in excess of federal standards in the year 1975. Such is most

certainly not the case. Indeed, it is submitted that a closer examination of the authorities relied upon by respondent, the New Jersey Implementation Plan (hereinafter Plan) itself, and a case decided Friday, February 2, 1973 in the District of Columbia Court of Appeals will show that the Plan is not valid as to the pollutants involved and such pollutants will not meet Federal Standards in 1975.

The Court apparently relied on the Respondent's Brief at page 45 for the proposition that the implementation plan had been approved. Respondent noted there that the attainment date required for the carbon monoxide national standard had been extended to 1977. It cited Environment Reporter, 121:0385; 40 C.F.R. 52 Section 1570 et seq.; T.XVIII, p. B22. Respondent should have noted further that other extensions were granted as shown by these sources; photochemical oxidants were also given two year extensions to 1977, and sulfur oxides and particulate matter were extended for 18 months. 40 C.F.R. Section 52.1572. (Pa 1). (These extensions were granted for the New Jersey portions of the New Jersey-New York-Connecticut Interstate Air Quality Control Region, in which the Sports Complex is planned to be located). Respondent might also have noted that the Plan was not approved for nitrogen dioxide, 40 C.F.R. Section 52.1576 (Pa 1) and for various sundry procedural defects, 40 C.F.R. Section 52.1577 et seq. (Pa 2). Of course, the Plan was approved subject to these exceptions. 40 C.F.R. Section 52.1573. (Pa 1).

It should be particularly noted that the Plan also was approved subject to the extensions noted above. A closer look at the Plan itself reveals this. Page 8 of the Plan, (Pa4), (Comments) covering carbon monoxide in the subject area, says that "...by the adoption of proposed Chapter 15, New Jersey Air Pollution Control Code, New Jersey would be within 3% of meeting the national avg. max. 8 hr. air quality standard...in 1977." [Emphasis added] . It should be further noted that even this guarded optimism "Assumes Federal Regulation of New Vehicles." It may not be best to make this assumption, as will be discussed, infra, at

The situation in regard to photochemical oxidants and hydrocarbons is not so obvious. As the Court notes in its opinion at page 7, the hydrocarbon standard and requirement for reductions is linked to those for photochemical oxidants. Thus approval for both these pollutants depend on approval for photochemical oxidants.

A careful examination of the Plan's data for photochemical oxidants at page 11, (Pa 6), indicates this approval depends on the two year extension for photochemical oxidants granted by 40 C.F.R. Section 52.1572(b). (Pa 1). The Comments on this page of the Plan claim that because New Jersey will be "within 2%" of meeting the 1975 standards. The Plan concludes that this is close enough, and that "only further study of air quality trends" would justify the additional regulation to having this pollutant within the standard.

Apparently the EPA did not agree. The data above the Comments indicates that this 2% figure is the amount by which the area will not meet the 1975 standards, but that these standards will be met in 1977. This is apparently why the photochemical oxidant standard was extended to 1977 for New Jersey by 40 C.F.R. Section 52.1572(b). (Pa 1).

The four major pollutants created by motor vehicles are nitrogen oxides, carbon monoxide, hydrocarbons and photochemical oxidants. The discussion above was necessary to show that without the two year extensions granted, the Plan has not been approved for these four pollutants. Of course, the plan was not approved for nitrogen oxides, and an extension for it would be irrelevant. On January 31, 1973, the U.S. Court of Appeals, District of Columbia Circuit decided Natural Resources Defense Council, Inc., et al v. E.P.A., Nos. 72-1522 etc. (hereinafter NRDC). The Court held that the Administrator of the EPA, while "acting in the best of faith...Nevertheless...did not conform to the strict requirements of the Clean Air Act of 1970...in granting extensions until mid-1977 for attainment of the national primary ambient air standard..." NRDC at 2.

Under Paragraph of the order,

> "The Administrator shall inform all states concerned...* that all states which have not yet submitted an implementation plan fully complying with the requirements of the Clean Air Act of 1970 must submit such a plan by April 15, 1973...In particular, it [the new implementation plan] must provide for the attainment of the primary standard as

> expeditiously as practicable but in no case later than May 31, 1975, and it must include...such other measures as may be necessary to insure attainment and maintenance of such primary or secondary standard, including, but not limited to land-use and transportation controls. NRDC at 3." [First emphasis in original; second added] .

New Jersey is a "state concerned". The footnote to the asterisk above said, "These states should include all those listed in paragraphs 1, 2 and 5 of the Stipulation between petitioners and the EPA in Addendum to Petitioners' Motion for Summary Reversal." A telephone call on February 9, 1972 to NRDC's Washington office confirmed that New Jersey was one of the states so listed. While the opinion does not state explicitly that all the implementation plans effected are void in toto, the language of the opinion would so imply. What is clear is that all of the automotive pollutants involved were covered by the plan only by virtue of the extensions granted to New Jersey (except for nitrogen oxides; the Plan was never approved for these). With these extensions voided, it is clear that these pollutants will violate the federal standards in 1975 and there is no statutory or administrative sanction to permit this.

Paragraph 3 of the order further requires that the new plan to be submitted by the states concerned "must satisfy each and every requirement of Sections 110 (a) (2) (A) through (H) [42 U.S.C.A. 1857 c-5 (a)(2)(A) through (H)] if it is to be approved by the Administrator." NRDC at 3. Paragraph 7 of the order states that

> "The Administrator shall permit the public to comment on any state plan submitted pursuant to paragraphs (3) or (9) of this order and on the request by the governor of any state for an extension of the date for attainment of the primary standard beyond May 31, 1975. Such opportunity may be limited to the filing of written comments without the necessity of a hearing." [emphasis added]

Consideration of the Sports Complex and its impact on the environment should be included in the formulation of the new plan. The invalidated plan did not include consideration of the development of the Hackensack Meadowlands region or the Sports Complex. T XVIII. C-1-20 to 25 (Testimony of Kenneth Johnson, Director of Air and Water Program Division for Region Two of the U.S. Environmental Protection Agency). However, Mr. Johnson stated that the effect of the complex was relevant, and apparently the Department of Environmental Protection agreed. See generally, T XVIII, C-3 to C-7.

It should be made clear that the impact of the Sports Complex cannot be ignored because the standards would be violated even without it. Steps must be taken so the standards will not be violated in 1975, and this obviously must include some controls over the Complex, which even the Sports Authority conceded would have some impact. Also, implementation plans which allow degradation of a present quality of air cannot be approved. Sierra Club v. Ruckelshaus, 344 F. Supp. 253 (D.D.C. 1972); 40 C.F.R. Section 50.2(c).

Thus, even if the State deems it proper to submit a new plan without public hearings (which would likely include proposals for a mandatory provision for adequate mass transit facilities before the complex could be constructed), the implementation plan must consider the environmental impact of the complex. Even if no extensions beyond 1975 are allowed, the plan "must include . . . such . . . measures as may be necessary to insure attainment and maintenance of such primary or secondary standard, including . . . land use and transportation controls." NRDC at 3. Those conditions (e.g., the state must have considered reasonably available attractive means of attaining the primary standard) and the facts of this case would certainly indicate the necessity of providing mass transit.

The Administrator, in approving or disapproving any new plan or approving any extension, must state his reasons for taking such action, considering both the material submitted by the states and that submittedby the public. NRDC at 4-5 and authorities cited thereat. If the Administrator fails his statutory duty to require or impose a plan which will result in attaining the federal standards, he may be sued in Federal Court by, inter alia, members of the public, and enjoined to so impose such a plan. Riverside v. Ruckelshaus, No. 72-2122-IH (C.D. Cal. Nov. 16, 1972), 4 ERC 1728 (BNA). The Court may order that the plan include "all necessary transportation controls and land use controls." Id., 4 ERC at 1731. That strong measures may be required under such an order is illustrated at 38 F.R. 2194 (January 22, 1973), which was published to comply

with the order in Riverside, which proposes a rule to amend the California plan. This proposed rule indicates that

> "... a reduction in vehicle miles traveled (VMT) by gasoline-powered motor vehicles of over 80 percent will have to be effected to achieve the ambient air quality standard for photochemical oxidants in 1977 as required by law. The proposed regulatory mechanism to accomplish the reduction in vehicle miles traveled (VMT) is gasoline rationing." [emphasis added]

38 F.R. at 2195.

Aside from the point that New Jersey no longer has an approved plan for the relevant pollutants, it should be recalled that this Court also based its opinion largely on the assumption that federal emissions regulations would have the intended effect, i.e. that they would help the states meet the 1975 standards. See Opinion at 8. That this assumption should not be made lightly is illustrated by two documents conceded by the Respondent to be good authority. These were marked for identification on August 2, 1972, T XVIII, D-3 and entered in evidence on August 8, 1972. T XXII, B-7. These Documents were C-A-28, Semi-Annual Report by the Committee on Motor Vehicle Emissions of the National Academy of Sciences to the Environmental Protection Agency, dated June 1, 1972.

The RECAT report was conceived with the cost-benefit analysis of the whole spectrum of federal automobile regulation, and made specific recommendations as to if and how these regulations should be modified or enforced; as such, much of it is not pertinent here. However, it did examine the feasibility of auto manufacturers' meeting the federal emission standards for 1975 and 1976. Among its conclusions were the following:

> "The ultimate feasibility of meeting the 1975-1976 emission standards has not yet been demonstrated except on a limited laboratory basis. There is a difference between the ability to synthesize prototype automobiles which can be certified by the Environmental Protection Agency and the ability to build them on a mass-production scale within the time frame prescribed by recent legislation."

RECAT at xix. Moreover, the problem might still not be solved even if brand new cars did meet the standards.

> "The complex automotive emission inspection program called forth by the provisions of the Clean Air Act will not insure that the low emission levels demanded will be maintained during owner operation of the vehicles."

The NAS report made somewhat the same findings. Tests indicate the automobile manufacturers have at best been able to approach the standards with the use of experimental prototype, page 19 and 39. The report stated flatly at page 30 that

> "From the data reviewed in Section 3.3, it is clear that no major manufacturer has yet demonstrated the technology needed to meet the requirements of the 1970 Clean Air Act Amendments of 1975 model year vehicles."
>
> Id. at xi.

NAS also concurred at page 35 that even if the standards were met, it would be unlikely that the control devices can or will be maintained up to the required point of 50,000 miles; see also pages 22 et seq.

The NAS report also made some observations that are highly relevant to the problem of 25,000 cars being started in the same place at about the same time. In referring to emissions tests for 1975 and later autos, the report noted at page 9 that one of the primary modes of emission test failure is expected to be associated with the cold start portion of the test. More specifically, the report stated at page 14 that "[i]t turns out that HC [hydrocarbons] and CO [carbon monoxide] emissions during the first two minutes of the test are greater than HC and CO emissions during the last 21 minutes." This was explained by the much richer mixture of fuel and air needed for cold engine operation.

In this concluding statement, the NAS report said it was possible that the 1975 standards might be met, but that this depended on many uncertain factors and achievement of the standards was not highly likely.

> "8. CONCLUDING STATEMENT

> The Clean Air Amendments of 1970 have had the effect of accelerating progress by automobile manufacturers in emission control. Experimental vehicles have been built and operated that, at low mileage, exhibit levels of emissions less than those specified for 1975 model year vehicles. However, information establishing the sustained effectiveness, durability, and reliability of prototype 1975 vehicle systems during typical consumer mileage accumulation is not available. The Committee finds that the technology necessary to meet the requirements of the Clean Air Amendments for 1975 model year light-duty motor vehicles is not available at this time.

NAS at 49.

To conclude this point, it should be noted that one major auto manufacturer, Ford Motor Co., has been fined $7,000,000 because its technicians made unauthorized adjustments and repairs to test engines so that apparent "compliance" with federal standards could be indicated in Ford's reports to E.P.A. New York Times, February 14, 1973, pg. 1. Seemingly, the prognosis for clean cars in 1975 is poor.

The points made above indicate that the controversy over the Sports Complex is not over. It may extend through more public hearing, a suit against the Administrator in Federal District Court (and possibly a suit by the Administrator against the Sports Authority,

see 42 U.S.C.A. Section 1857c-8 et seq.), and appeals from such suits. Time is of the essence. The Sports Authority's philosophy of "damn the legal torpedoes, full speed ahead" is a matter of public record, see, eg. New York Times, December 1, 1972, pg. 43; Star Ledger, December 7, 1972, pg. 1; and was well noted by this Court on the date this matter was argued.

It is therefore submitted that this Court should reverse its affirmance of the Agencies' findings and enjoin construction of the Sports Complex until the Sports Authority can provide proof that such transportation controls as to cause the least practicable environmental damage will be implemented, or until such safeguards are incorporated in a bona fide approved implementation plan which has considered the impact of the Complex. The Court is familiar with the case and this action, if taken before the federal actions outlined supra have taken their course, would prevent enormous amounts of the taxpayers' money being sunk into construction that may not be completed as planned until the necessary land use and transportation controls are incorporated into the plans for the Sports Complex.

Respectfully submitted,

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For Clean Air, Inc., et al

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Repetition for Rehearing

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SUPREME COURT OF NEW JERSEY
Docket No. 9175

In the Matter of the
Environmental Hearing on the
Proposed Sports Complex in the
Hackensack Meadowlands.
Civil Action

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey:

The petitioners, Citizens for Clean Air, et al., present this second petition for a rehearing of the above cause and in support thereof, respectfully show:

1.The appeal in this case was argued before this Court on December 18, 1972.

2. On February 5, 1973, the Court rendered its decision in favor of the respondent and against the petitioners, affirming the findings of the Division of Environmental Protection and the Hackensack Meadowlands Development Authority.

Repetition for Rehearing

3. On February 20, 1973, Petitioner filed a petition for rehearing on the basis of a federal case which invalidated New Jersey's Implementation Plan for achieving and maintaining federal air quality standards. The petition was denied.

4. On the basis of a new federal regulation issued on March 8, 1973, Petitioners hereby resubmit their petition for rehearing, on the belief that this regulation clearly indicates that the Sports Complex was planned and has been initially constructed illegally.

The Federal Clean Air Act, 42 U.S.C.A. Section 1857 et seq., in discussing state implementation plans, says at 42 U.S.C.A. Section 1857c-5(a)(1):

> "Each state shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within nine months after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 1857c-4 of this title for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State."

A similar requirement is made for the secondary standard.

Section 1857c-5 (a)(2)(B) says that the plan must contain measures such as land-use and transportation controls to insure attainment and maintenance of the standards and (a)(2)(D) requires a procedure for review of the location of new sources.

The several States thus have the initial responsibility for formulating a plan to attain and maintain federal air quality standards. However, if a plan that meets detailed specified requirements is not submitted by the time prescribed, the Administrator may not approve such a plan if inadequate, Sierra Club v. Ruckelshaus, 344 F. Supp. 253 (D.D.C. 1972), and must impose an adequate plan on the recalcitrant state. 42 U.S.C.A. Section 1857c-5(c). The Administrator has various powers of enforcement of all plans, in addition to the enforcement powers given the State in the plan itself.

On May 31, 1972, 37 FR 10842, the Administrator noted that state implementation plans were required nine months after promulgation of the standards, which were promulgated on April 30, 1971 (36 FR 8186). As of May 31, 1972 all 50 states had submitted plans, and on that day these were generally approved, with specific exceptions noted. At 37 FR 10844, discussing Transportation Control Measures, the Administrator said it was recognized that States had little experience with dealing with such measures as a means of dealing with air quality problems. On this basis, the Administrator had granted a blanket deferral to the States of the statutory deadline for submitting transportation control measures until February 15, 1973. Various extensions of the deadlines for meeting the national standards were also given.

Repetition for Rehearing

On January 31, 1978, the Court of Appeals for the District of Columbia Circuit decided Natural Resources Defense Council, Inc., et al. v. Environmental Protection Agency, Nos. 72-1522 etc. (hereinafter NRDC). The Court found that in taking the above action , while acting in the best of faith,

> "he [the Administrator] did not conform to the strict requirements of the Clean Air Act of 1970 in permitting several states to delay submission of transportation control portions of their implementation plans until February 15, 1973, and in granting extensions . . . The combined effect of these unlawful actions have been to interfere with the congressional purpose of attaining clean air by a date certain, May 31, 1975, subject only to certain limited and well defined statutory extensions" (emphasis added).

Accordingly, the Court ordered that the Administrator rescind these extensions, and that he inform all the states concerned that new implementation plans which would provide for meeting all the requirements of the Clean Air Act must be submitted to him no later than April 15, 1973. Extensions beyond the 1975 deadline could be gained only by strict procedural compliance with the statutory requirements.

On the basis of NRDC Petitioner submitted a petition for rehearing to this Court. Petitioners position was that this rescission of the extensions granted, plus the fact that New Jersey had received such extensions,

together with data published in the State's Implementation Plan, clearly established that New Jersey would not meet the national standards in 1975 and now had no legal sanction for failure to do so. The petition was denied.

Subsequently and in response to NRDC, the Administrator on March 8, 1973 published at 38 FR 6279 (Pa 1) an accouncement of a requirement that all implementation plans including New Jersey's

> "must be disapproved to the extent that they do not contain provisions which will permit the review, and provide the authority to prevent the construction, modification, or operation of complex sources at a location where emissions associated with such source would result in violation of a national standard or the States control strategy."

38 FR 6279, (Pa 1).

While the regulations do not yet specify all the facilities that will be considered complex sources, "Sports complexes" was one category the announcement specifically enumerated as such a source. Also, in disapproving plans that merely dealt with review of sources as to the pollution the sources themselves gave off, the announcement noted:

> "Nor do they deal with the problem of emissions generated not by the facility being

constructed but by sources associated with such facility, including general urban and commercial development."

38 FR 6279. (Pa 1).

It is thus clear that review and control provisions for projects such as the Sports complex must be incorporated in a State's Implementation Plan before the project may be commenced. The major issue is whether the Sports Complex itself could have been legally commenced if it was not considered in the State's Plan, no review and control provisions were provided for it, and the Plan itself has been invalidated to the extent of the absence of such provisions.

While the regulation is a new expression of the law under the Clean Air Act, it has the effect of clarifying previous law by retroactively invalidating state implementation plans that were approved as of May 31, 1972. This invalidation was limited to the issue of complex source control.

> "The action taken herein to disapprove State implementation plans with respect to their lack of provisions for review of complex sources is not intended to affect, and should not be construed as affecting, the validity of prior approvals of the State plans by the Administrator or prior promulgation of regulations to correct State plan deficiencies. Provisions of approved or promulgated plans remain in effect and are enforceable by the State

and/or Federal Government in accordance with the provisions of the Clean Air Act."

38 FR 6279, (Pa 1).

Thus, projects commenced subsequent to May 31, 1972, were still subject to the State's Implementation Plan and the transportation and land-use control provisions that should have been in the Plan, and constructively were in the Plan because of the Administrator's latest action. At any rate, the Sports Complex has been initiated without being subject to the mandated review and controls. In addition to review prior to construction or modification, each plan must provide that the State will

> "have the authority to prevent the development of such sources or causes where necessary to insure that the standards are maintained."

38 FR 6279. (Pa 1).

The Court in NRDC, while not expressly stating whether any regulation concerning the new plans would have retroactive effect, certainly indicated that such was its intent. First, it noted that the state implementation plans had not been approved in conformity with the strict requirements of the Clean Air Act. More importantly, it held that the extensions were unlawful actions. If the actions approving the delay of submission of transportation and land use controls were ultra vires, and unless the new implementation plans, with the

provision for review of complex sources, are deemed to be retroactive to May 31, 1972, when the old plans were invalidated, then there has been a hiatus since that time with regard to parts of plans that are mandated by statute to exist. This point becomes more compelling when it is considered that plans need not be submitted until April 15, 1973. Moreover, the Administrator indicated in the announcement that he has proposed a new time table to the Court that decided NRDC that would allow delay of final submission of plans until August 15, 1973. Should this be allowed, and retroactive effect not be ruled, this critical new environmental protection would be ineffective for over a year. The Court's sense of urgency hardly imparted this intent.

Also, the announcement did not expressly indicate retroactive effect. However, the amendment to 40 C.F.R. Part 52, Section 52.22, Maintenance of national standards, indicates retroactivity:

> "Nothing in this section shall invalidate or otherwise effect the obligations of States, emission sources, or other persons with respect to all portions of plans approved or promulgated under this part." (emphasis added).

38 FR 6280. (Pa 2). This provision would apply to projects undertaken pursuant to valid and approved provisions of an implementation plan, but clearly not to those subject to provisions which have been expressly disapproved. See the quote supra which specifies that

this regulation applies only "with respect to their [the plans] lack of provisions for review of complex sources." This means that projects subject to such unapproved provisions have gained no vested rights to proceed because of their being commenced prior to the issuance of this regulation. Expressio unius est exclusio alterius.

It should be noted that the environmental hearings that have been held would not satisfy the new requirements. First, the form of environmental review of complex sources must be in the state's implementation plan and approved by the Administrator, and, of course this has not happened. Second, the new regulation requires that states establish their authority to control complex sources effectively enough to maintain federal standards, and to prevent construction or operation if necessary. Because the New Jersey legislature mandated the complex to go into the Meadowlands in approximately its new projected form, the issue of the possible conflict of federal and state law has not yet been raised. Indeed. a rehearing might establish that the New Jersey Sports and Exhibition Authority Act is invalid under the Supremary Clause of the United States Constitution.

On the basis of the foregoing, a rehearing is requested to determine the effect of the new regulation on the Sports Authority Complex and its construction and operation.

5. Counsel for Petitioners hereby certifies that this second petition for rehearing is submitted in good faith and not for purposes of delay.

Respectfully submitted,

MEZEY & MEZEY
Attorneys for New Jersey
Citizens for Clean Air, Inc., et al

By s/ Frederick C. Mezey
FREDERICK C. MEZEY

Denial of Petition for Rehearing

SUPREME COURT OF NEW JERSEY
M-234 September Term 1972

In Re:

ENVIRONMENTAL HEARINGS ON THE

PROPOSED SPORTS COMPLEX

This matter having been duly presented to the Court, it is Ordered that no member of the Court moving for reconsideration, the motion for rehearing is denied.

Witness, the Honorable Joseph Weintraub, Chief Justice, at Trenton, this 6th day of March, 1973.

s/ Florence R. Peskoe
Acting Clerk

FILED
MAR 6. 1973
s/ Florence R. Peskoe
ACTING CLERK

A TRUE COPY

s/ Florence R. Peskoe
ACTING CLERK

Denial of Repetition for Rehearing

SUPREME COURT OF NEW JERSEY
M-316 SEPTEMBER TERM 1972

In Re:

Environmental Hearing on

the Proposed Sports Complex

This matter having been duly presented to the Court, it is Ordered that no member of the Court moving for reconsideration, the petition is denied.

Witness, the Honorable Joseph Weintraub, Chief Justice, at Trenton, this 2nd day of May, 1973.

s/ Florence R. Peskoe
Acting Clerk

FILED
MAY 2, 1973
s/ Florence R. Peskoe
ACTING CLERK

A TRUE COPY
s/ Florence R. Peskoe

Excerpts of Draft Impact Analysis

* * *

For the motor vehicle related sources, the distribution of automobiles and buses (on the highway network and while idling in the parking lot) was considered for football, horse racing, and arena events. For calculation of one hour average concentrations, the conservative assumption was made that the parking lot at the facility would fill (or empty) of the number of automobiles estimated for each activity, during the one hour period. The average emission rates during the one-year period were calculated with the further assumption that one half of the designated number of vehicles were idling for the complete hour in the parking lot and one half of the vehicles were distributed on the road network in the vicinity of the Sports Complex.

The year 1990 was chosen for analysis because all facilities should be completed by that date, and sufficient information on the predicted surrounding background air quality in 1990 was available from a current (unpublished) ERT study of the Hackensack Meadowlands area.

Measurements of five pollutants from two to five air monitoring stations operated by the New Jersey Department of Environmental Protection were averaged to evaluate the current air quality of the Hackensack Meadowlands area. (Station locations are delineated on Figure XII-C2 in the Inventory.) By comparison of the measured annual average values with the pertinent State or Federal standards or their equivalents, it is evident that the standards currently are exceeded for all five pollutants:

Excerpts of Draft Impact Analysis

	Measured	Standard	Unit
Particulates	113.3	70.1	ug/m3
SO_2	0.043	0.02	ppm
CO	4.24	1.25	ppm
HC	2.09	0.24	ppm
NO_2	0.113	0.05	ppm

From the numerous possible combinations of facility operations, activity levels, seasons, days of week, and hours of day, the cases outlined in Table XII-C2 were selected for study. Among all the possible sporting event combinations that may occur, the one of greatest potential impact is summer racing and arena events on a weekend evening. In all analyses, a conservative approach was used. In the evaluations of the peak exit hour for winter racing, for example, weekend estimates of automobile traffic were used, but a background inventory for a weekday was assumed. This yields a slightly greater impact than if combinations of weekday traffic and weekday background or of weekend traffic and weekend background had been used.

Estimates of emission from the localized sources related to the Sports Complex were superimposed on the region-wide 1990 background air quality concentration resulting from all sources in the Greater New York area and the specific sources of the Hackensack Meadowlands Master Plan II projections.

Excerpts of Draft Impact Analysis

* * *

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Estimates of emission from the localized sources related to the Sports Complex were superimposed on the region-wide 1990 background air quality concentration resulting from all sources in the Greater New York area and the specific sources of the Hackensack Meadowlands Master Plan II projections.

Because the background concentrations were determined on an annual average basis, adjustments were made in each of the short-term analyses to reflect seasonal differences and other factors. The rationale of these adjustments is discussed in Section XII (Chapter C) of the appended Inventory. The MARTIK dispersion model that was used in the analyses also is described in Section XII (Subchapter C.3).

Assessment of Impact

Regional Scale

Because the Sports Complex will be used intensively only part of the year, and substantial vehicular emissions will be limited to a few hours on each day of intensive use, the probable regional impact (average annual contribution) of the proposed Complex will be negligible. During occasional time periods of one hour to one day, there will be small, but measurable, increases (less than 10%) in average pollutant concentrations over the Meadowlands region as a result of operation of the Complex.

The unpublished ERT study indicates that the particulate standard will not be met by the Meadowlands region in 1990, even in the absence of the Sports Complex. The Sports Complex will have a relatively minor impact upon ambient atmosphere particulate concentrations, but we project the standard will be violated anyway, because of the large background contribution.

Excerpts of Draft Impact Analysis

The hydrocarbon compound 3 hour standard also is predicted by the ERT study to be exceeded by a factor between 6 and 10 in the Hackensack Region, 1990. The HC standard is designed not directly to protect public health, but to limit the formation of photochemical smog in the atmosphere. The current standard now is exceeded by a factor of 10 or more in virtually every major urban area in the United States. Because the regional background concentration will exceed the current HC standard by such a large factor, the impact of additonal HC emissions from vehicles operating in the vicinity of the Sports Complex will be relatively small overall. The expected HC concentration levels at the Complex will be similar to those found now in the vicinity of large volume parking areas in urbanized regions.

Although the applicable standards will not be exceeded, elevated levels of CO and (to a lesser extent) No_x will occur over the region during short time periods (such as one hour) while the Sports Complex facilities are in use.

* * *

Statements of New Jersey Department of Environmental Protection Officials, New York Times, June 12, 1973

According to William A. Munroe, chief of the State Bureau of Air Pollution Control, New Jersey would have been able to meet the 1975 deadline and produced a plan on Friday except for a monumental miscalculation of the intensity of the smog problem.

Difference in Measurements

Originally a state monitoring station in Bayonne measured maximum hydrocarbon levels were at 0.135 parts per million.

However, a similar station on Welfare Island, operated by New York environmental officials, recorded the air drifting east from New Jersey as containing maximums of 0.207 parts per million.

In Los Angeles, smog burns the eyes when the air measures 0.15 hydrocarbon parts per million, and the schools are closed when it reaches 0.35.

The difference in the Bayonne and Welfare Island figures meant that New Jersey must effect a 69 per cent hydrocarbon reduction, rather than a 27 per cent reduction that was initially calculated.

The problem, according to state officials, is to achieve it without crippling vehicular traffic, which is the backbone of state transportation in the northern metropolitan region.

Elsewhere the problem is not as bad, so the remedies envisioned by the Federal Government are not as drastic.

For example, the Federal plan reportedly calls for reducing vehicular miles traveled in Mercer County by only 38 per cent.

Commissioner Richard J. Sullivan of the State Department of Environmental Protection has already warned Federal officials that Federal and state plans would be highly unpopular with the Legislature, the automobile and oil industries, and the owners of the three million automobiles registered in New Jersey.

Other state officials point out that each of the state proposals would require legislative action and that the Legislature voted recently to delay for seven months the state's automobile exhaust inspection system, originally scheduled to begin July 1. The program is regarded as a critical part of the state's program to meet Federal standards.

In the event the state delays its clean-air program, Mr. Munro says, the Federal Government will step in.

"Here we have the Federal Government telling the state to comply," he noted. "If we don't the Federal Government will do it for us."

Statements of Chief Justice Weintraub of the New Jersey Supreme Court, Daily Home News, Dec. 19, 1972

Justice: Sports complex ceremony 'in bad taste'

By GORDON SHARP
Home News staff writer

TRENTON — N.J. Supreme Court Chief Justice Joseph Weintraub yesterday criticized the Nov. 29 groundbreaking for a $300 million Hackensack Meadowlands Sport Complex, in which Gov. William T. Cahill and other top state officials took part, as being "in bad taste."

Weintraub's comments drew a public apology from James A. Pitney, attorney for the state Sports and Exposition Authority, sponsors of the groundbreaking.

The Supreme Court ruled earlier this year that no construction was to take place in the meadowlands until the justices had reviewed an environmental hearing report which approved the sports complex plans. The report is the subject of an appeal by environmentalists opposed to the sports complex plans.

Oral arguments on the appeal were heard in state Supreme Court here yesterday. The justices are not ex-

Statements of Chief Justice Weintraub of the New Jersey Supreme Court, Star Ledger, Dec. 19,1972

GROUNDBREAKING BEFORE COURT RULING

Sports Authority action irks Weintraub

By DANIEL HAYS

State Supreme Court Chief Justice Joseph Weintraub yesterday criticized the New Jersey Sports Authority for holding a groundbreaking while a question dealing with the sports complex is still in the courts.

Weintraub said the groundbreaking ceremonies were "in bad taste." His comments came during an appeal by various groups that challenged the environmental approval which the project has been granted by two state agencies.

"Tell us how there was a groundbreaking in advance of a decision of this court . . . Was it anticipation?" Weintraub asked sports authority attorney James Pitney.

When Pitney said it was not, the chief justice said when he read that the ceremonies in East Rutherford were held, "I got the impression no one could think very much about the independence of this court. That's a pretty bad public image."

The decision to give environmental approval to the project, based on 50 recommendations for improvement, was made by the Hackensack Meadowlands Development Commission and the Department of Environmental Protection after five weeks of hearings which ended Aug. 11.

The court reserved decision and asked for further briefs on the argument. Until the case is decided, the authority will be unable to sell bonds for the project.

Fred Mezey, representing the New Jersey Citizens for Clean Air and 13 other groups, said the sports authority's environmental go-ahead was based on faulty information. Air pollution figures that were introduced at the hearing by the authority were outdated, he argued.

Mezey said the complex would violate the provisions of the Federal Clean Air Act and that the agencies which cleared the complex had "so little basis for accepting the air pollution study there had to be bias."

Weintraub said he wondered if the Clean Air Act applied because "it will be a tough day when the courts decide where you can build a factory."

Mezey also argued that the two agencies, in considering the sports complex, failed to take into account the full development of the Meadowlands which some projections have given a future population of 185,000 persons.

He asked the court to decide what sort of environmental guidelines should be imposed because "the question is going to be raised again and again."

Attorney Ralph Chandless, representing South Hackensack, said the project would be "destructive of every one of the adjacent communities unless it's done right."

"You think it's a very bad policy decision to put it there? That is not for us to pass upon, it's the Legislature's responsibility," responded the chief justice.

Weintraub, noting the authority plans to build a theme park, said he had read of traffic jams leading into Disneyworld in Florida that were backed up 14 miles.

"What theme park do you know that only draws 100 cars?" he asked. Pitney said that "when and if there is to

be a theme park," he assumed there would be another environmental impact hearing.

Referring to the complex's 750-acre site, Pitney noted that it was not "a pristine setting" and that to build it the authority had to "dig a hole in the garbage."

He said if the court rules the agencies' recommendations were arbitrary, "I would agree . . . we can put the garbage back in the hole." He said arguments about air pollution problems brought up by the environmentalists included problems that only resulted in rare, "extreme meteorological conditions."

Statements of Richard J. Sullivan, Commisioner of the New Jersey Department of Environmental Protection, New York Times, June 23, 1973

SULLIVAN ASSAILS U.S. PLAN ON AUTOS

Says the Pollution Agency's Proposal to Cut Vehicle Use Is 'Unrealistic'

By WALTER H. WAGGONER
Special to The New York Times

JERSEY CITY, June 22—With the statement that "we will not recommend that vehicular traffic be reduced by two thirds," the state's Environmental Protection Commissioner, Richard J. Sullivan, set the stage today for a major clash with the Federal Government over the state's air-pollution controls.

The significance of Mr. Sullivan's flat rejection of so drastic a cutack lay in its conflict with plan recently proposed by the Federal Environmental Protection Agency to cope with an air-pollution and smog crisis in the northern counties of New Jersey that spills over into metropolitan New York.

Mr. Sullivan described the Federal plan for a 68 per cent reduction in auto use in nine northern Jersey counties as "unrealistic" and said that there were "very serious questions of the scientific validity" of the Federal proposals.

He added that he would "have more to say about that" at public hearings planned by the Federal agency in Newark, Trenton and Camden in mid-July. After being granted stays of April 15 and June 15 deadlines, the state now has until Aug. 15 to submit a pollution-control plan acceptable to the Federal agency's standards.

New Hazard Questioned

Mr. Sullivan's comments were made in the presence of Federal Environmental Protection Agency officials at a seminar on New Jersey's "air quality implementation plan" sponsored by the Metropolitan Regional Council, Inc., at Jersey City State College.

He also raised questions about what has suddenly developed as a new environmental hazard, the so-called "complex source" of auto-emission pollution. The term applies to major developments, such as race tracks, sports arenas and even shopping centers that would produce heavy-density automobile traffic in limited areas.

Statements of Richard J. Sullivan

The air-pollution hazard of such developments was brought to the attention of environmental officials with a suit against New Jersey's projected sports-arena and race-track complex in the Hackensack Meadows.

Asked whether the state had any kind of legal authority over land use and development that the Federal "complex source" requirements demand, Mr. Sullivan replied that the state did

And although acknowledging that State Attorney General's office was looking into the matter, Mr. Sullivan asserted that "the Federal Government cannot require us to enforce what statutes don't permit.

Mr. Sullivan said that the state, while resisting "unrealistic" vehicular-mileage requirements demand, Mr. Sullivan replied that the state did not have any such authority.

Mass-Transit Emphasis

And although acknowledging that the State Attorney General's office was looking into the matter, Mr. Sullivan asserted that "the Federal Government cannot require us to enforce what our statutes don't permit."

Mr. Sullivan said that the state, while resisting "unrealistic" vehicular-mileage controls of the scope proposed by the Federal agency, would concentrate on the expansion of mass transit that would relieve the highways of automobiles and on the lowering of concentration of motor vehicles in the cities.

Mr. Sullivan said that "many air-pollution problems can be coped with by officials at the local level," explaining that the "fundamental confrontation" over protective regulations had been won by environmentalists in the defeat of early resistance by the coal and oil industries.

"But the next issue is one that the public may not yet understand," he continued. "It will be the confrontation between the citizen and the environment."

Restriction Seen

This will involve, he said, the controlled use of motor vehicles and of electricity. The use of electricity in New Jersey is doubled every eight years, and in each eight-year period, more electricity is consumed than has been used in the past by all mankind, he said.

Observing that "there aren't enough acres" to produce that amount of electricity," he predicted that there may have to be a limitation on the use of electrical power.

William A. Munroe, chief of the State Bureau of Air Pollution Control, said he also was 'not in full agreement" with the Federal plans for regulating auto use in cities.

Speaking of smog from internal combustion engines that has become a hazard in Los Angeles and also threatens New York, he said the photochemical oxidents that produce the smog do "not come out of the tail pipe."

Statements of Richard J. Sullivan, Commissioner of New Jersey Department of Environmental Protection, New York Times, July 19, 1973

State Official Disputes Role Of Autos in Air Pollution

By DAVID BIRD

Special to The New York Times

NEWARK, July 18 — The automobile may not be the culprit it was thought to be in causing smog in the New York-New Jersey metropolitan area, New Jersey's top pollution-control official testified here today.

A greater share of the blame, said Richard J. Sullivan, the state Commissioner of Environmental Protection, should be put on stationary sources such as the tank farms, refineries and fuel loading docks that in Northern New Jersey are "one of the world's largest petro-chemical complexes."

Commissioner Sullivan testified at a crowded hearing held here by the Federal Environmental Protection Agency on its controversial plan to clean up the region's air.

Federal officials have placed a heavy burden on New Jersey for controlling the area's air pollution because they say, the prevailing winds blow pollution over to New York City, causing an additional problem there.

To meet the requirements of the Federal Clean Air Act requiring air that is healthful to breathe, the Federal pollution control officials have put forward plans that would reduce automobile travel in Northern New Jersey as much as 68 per cent.

The proposal has stirred strong opposition on the ground that such a reduction in automobile travel would cripple the economy of the state, which has little adequate public transit.

The reason Federal officials have focused on automobiles in New Jersey is that a series of readings at a monitoring station on New York's Welfare Island showed a high buildup of oxidants—a major component of smog—early in the afternoon after the pollutants have drifted over from the 6-to-9 A.M. rush hour in Northern New Jersey.

Concern Is Voiced

But Commissioner Sullivan said today that when his staff began studying the readings

closely they found that the oxidant level did not always follow the traffic.

"We became concerned," Commissioner Sullivan said, "when we observed that the highest level of oxidants occurred on a Sunday."

Commissioner Sullivan said that on that day the vehicle miles traveled in New Jersey were estimated to be about 27 per cent that of a normal weekday.

"Under the circumstances it must be asked why, on a day when the vehicle miles traveled in New Jersey were 73 per cent less than normal, was the oxidants standard exceeded at Welfare Island," Commissioner Sullivan said.

He said his calculations indicated that on that peak day the causes of the oxidants were 71 per cent stationary sources and 29 per cent motor vehicles.

This is in direct opposition to the increasing feeling among environmentalists and many pollution-control officials that the automobile is the villain.

No Federal Challenge

Federal officials did not immediately challenge Commis-

mediately challenge Commis-

sioner Sullivan's figures, but indicated that they suspected he was under strong pressure to avert the economic effects of sharp reductions in the state's auto travel.

By law Federal officials must present by Aug. 15 a plan to clean the region's air. Commissioner Sullivan said he would not be able to present a detailed plan of his own by that date. The law, however, provides that a state plan — if Federal officials judge it will achieve clean air — may be substituted as late as Dec. 15. Commissioner Sullivan said that he would present a plan by that time.

That the automobile is important to New Jersey was underscored in testimony by Newark's Mayor, Kenneth A. Gibson.

He agreed that air-pollution control was important because at Newark "the incidence of respiratory disease is fully three times that of the U.S. as a whole."

Notice Given of Intention to File Related Suit

MEZEY & MEZEY
COUNSELLORS AT LAW

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IN REPLY REFER TO: No. 5606
New Brunswick

July 26, 1973

Robert W. Fri
Acting Administrator
Environmental Protection Agency
Washington, D.C. 20460

Dear Sir:

Please be advised that we represent New Jersey Citizens for Clean Air, Inc., Hoboken Environment Committee, Hudson River Fisherman's Association, Weekawken Environment Committee, C.A.P.A.B.L.E., Save the Palisades Association, Citizens Committee of Hudson

Notice Given of Intention to File Related Suit

County, Hudson County Citizens for Clean Air, Barbara Eisler, Marianne Wuillamey and James S. Drago, as prospective plaintiffs in an action under the Clean Air Act. The Administrator is hereby given notice pursuant to Section 304 of the Clean Air Act, 42 U.S.C. Section 1857h-2(b), 2nd 40 C.F.R. Section 54.1 et seq., that sixty days from the date of the postmark of this notice, suit will be brought against him in the United States District Court for the District of New Jersey under 42 U.S.C. Section 1857h-2(a)(2) for failure to perform a non-discretionary duty arising under the Act.

The duty referred to arises under 42 U.S.C. Section 1857c-8(a) (1), which provides that whenever the Administrator finds on the basis of any information available to him, that any person is in violation of any applicable implementation plan, he shall notify that person and the State in which the plan applies of such violation and take such other steps as necessary to abate the violation.

On June 22, 1973, the Acting Administrator, Robert W. Fri, imposed a transportation control plan on the State of New Jersey as part of its implementation plan, requiring, inter alia, that no new parking facilities might be located in an area in which federal air quality standards are not being met, if this would result in an increase of vehicular miles traveled in that area. 38 Fed. Reg. 17782, 17790 (July 3, 1973). The New Jersey Sports and Exposition Authority is constructing a sports complex in an area known as the Hackensack Meadowlands, which is currently planned to include a

parking facility for 25,000 cars and 400 buses. Federal ambient air quality standards are not currently being met in that area, and this sports complex will result in untold millions of additional VMT per year in this area. To the prospective plaintiffs' knowledge, the Administrator has taken no action to cure this violation.

It is assumed the Administrator is aware of this development and has sufficient information to proceed under 42 U.S.C. Section 1857c-8, i.e., to prohibit the construction of the above parking facility. However, should any additional information be desired, the prospective plaintiffs herein will supply any they have available.

Very truly yours,

MEZEY & MEZEY

By _____
FREDERICK C. MEZEY

FCM:cv
cc: Jerold M. Hansler, Regional
Administrator
Region II, United States EPA
26 Federal Plaza
New York, New York 10007

Commissioner Richard J. Sullivan
Dept. of Environmental Protection
P.O.Box 1390
Trenton, N.J. 08625

Notice Given of Intention to File Related Suit

New Jersey Sports and
Exposition Authority
1100 Raymond Blvd., Room 324
Newark, New Jersey

Governor William Cahill
State House
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Complaint Filed in Related Case

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UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

MARIANNE WUILLAMEY, BARBARA EISLER AND JAMES DRAGO,

Plaintiffs,

vs.

DAVID A. WERBLIN and RICHARD J. SULLIVAN,

Defendants.

I. STATEMENT AS TO JURISDICTION.

1. This is a civil action seeking declaratory, injunctive and equitable relief. Plaintiffs seek an injunction against the deprivation, under color of the law of the State of New Jersey, of rights created in them by the Clean Air Act, as amended, 42 U.S.C.A. Section 1857 et seq. hereinafter Clean Air Act. Jurisdiction is invoked pursuant to Title 28, United States Codes, Sections 1331, 1337, 1361 and 1391. This action seeks a judgment declaring the New Jersey Sports and

Exposition Authority Law, N.J.S.A. 10-1 et seq., unconstitutional under Article VI of the Constitution of the United States as being inconsistent, incompatible and repugnant to the Clean Air Act, 42 U.S.C.A., Section 1857 et seq; and an injunction to restrain the defendant New Jersey Sports and Exposition Authority from proceeding with the financing or construction of a proposed sports complex and associated activities and structures in the proposed locations therefor in the area known as the Hackensack Meadowlands pursuant to the requirements of the New Jersey Sports and Exposition Authority Law. For the convenience of the Court, relevant provisions of this statute and portions of the decisions of the Supreme Court of New Jersey construing these provisions are recited in Paragraph 21 of this complaint.

2. Because this suit concerns a federal statute regulating interstate commerce under 28 U.S.C, Section 1337. There is no requirement of an amount in controversy of Ten Thousand ($10,000.00) Dollars.

II. VENUE

3. Venue is proper pursuant to 42 U.S.C. Section 1857h-2(c).

III. PARTIES

A. Plaintiffs

4. Plaintiff Marianne Wuillamey resides at 158 Edgar Street, Weekawken, New Jersey. She is a citizen and taxpayer of the State of New Jersey and the United

States. Solely because of grievances hereinafter set forth, she is in jeopardy of being deprived of rights created in her by virtue of the Clean Air Act. She is further aggrieved by the expenditure of the State funds on a project being developed, which, as currently planned, cannot be constructed or operated other than in violation of the Clean Air Act.

4a. Plaintiff James Drago resides at 418 Fourth Street, Union City, New Jersey. He is a citizen and taxpayer of the State of New Jersey and the United States. Solely because of grievances hereinafter set forth, he is in jeopardy of being deprived of rights created in him by virtue of the Clean Air Act. He is further aggrieved by the expenditure of the State funds on a project being developed, which, as currently planned, cannot be constructed or operated other than in violation of the Clean Air Act.

5. Plaintiff Barbara Eisler resides at 222 Greenwood Terrace, Hillside, New Jersey. She is a citizen and taxpayer of the State of New Jersey and the United States. Solely because of grievances hereinafter set forth, she is in jeopardy of being deprived of rights created in her by virtue of the Clean Air Act. She is further aggrieved by the expenditure of the State funds on a project being developed, which, as currently planned, cannot be constructed or operated other than in violation of the Clean Air Act.

6. Plaintiffs are persons who are protected by the provisions of the Act, which provides substantive rights to minimum standards of air quality and are

beneficiaries of requirements in the Act which insure that procedures will be adopted by the several states, or will be imposed upon them by the defendant Administrator of the United States Environmental Protection Administration, which procedures must insure that the substantive rights created are not violated.

B. Defendants

7. Defendant David A. Werblin is the Chairman of the New Jersey Sports and Exposition Authority.

8. Defendant Richard J. Sullivan is the Commissioner of the New Jersey Department of Environmental Protection.

9. Both Defendants reside in the capacity in which they are sued in the District of New Jersey.

10. Each defendant is sued individually and in his official capacity. Relief is sought against each and all defendants as well as their agents, assistants, successors, employees, attorneys and all persons acting in concert or cooperation with them or at their direction.

11. Defendants Werblin and Sullivan have been, are presently and will be acting under color of authority and law of the State of New Jersey. Defendant Werblin is charged with the responsibility of supervising the creation and operation of a massive sports complex in the Hackensack Meadowlands, which complex has been mandated to be located therein by the legislature of the

State of New Jersey. Defendant Sullivan is charged with the enforcement and execution of the laws of the State of New Jersey and more particularly with insuring that the State takes measures necessary to insure that federal air quality standards are achieved and maintained, and that any applicable implementation plan for such achievement and maintenance shall be complied with. Plaintiffs and members of their respective classes have been and will be deprived of statutorily created rights by the Sports Complex's being developed in violation of the Clean Air Act. Defendant Werblin is responsible for this development, and Defendant Sullivan is responsible for insuring that any such development will not be in violation of the Act.

IV. CLASS ACTION ALLEGATIONS.

12. Plaintiffs Eisler and Wuillamey are representatives of a class as defined by Rule 23 (a) of the Federal Rules of Civil Procedure. They represent the class of persons residing in New Jersey who are aggrieved by the development of the Sports Complex in violation of the requirements of the Act and regulations thereunder, and the danger that the Sports Complex will cause violations of federal clean air standards. Plaintiffs sue on behalf of themselves and all citizens of New Jersey similarly situated.

13. This class is so numerous that joinder of all members is impracticable.

14. The claims of the representatives of the class are typical of the claims of all members of the class.

15. The representatives of the class will fairly and adequately represent and adequately protect the interests of the class since:

(a) Plaintiffs have been denied the protection of safeguards provided by the Act and regulations thereunder to insure that no projects would be undertaken without assurance that such projects would not cause violations of federal clean air standards and Plaintiffs believe that strict compliance with such safeguards are essential to protect their health.

(b) Plaintiffs reside in the New Jersey sector of the New Jersey-New York-Connecticut Interstate Air Quality Control Region, whose current air quality and prospects for improvement are so poor that the Administrator of the United States EPA has already been forced, under the terms of the Act, to impose an implementation plan to achieve and maintain air quality standards which has been conceded by the Administrator himself to be drastic and extreme. Plaintiffs believe that the operation of the sports complex itself will cause hundreds of millions of additional vehicular trip miles to be driven in the region surrounding the Sports Complex annually. Plaintiffs believe this will significantly increase the hazard to their health of breathing the air in this region. Further, plaintiff Wuillamey lives in close proximity to the present site of the sports complex and believes that the congregation of 25,000 cars in one place, an undetermined number of times per year will cause further danger to her health,

(c) The attorneys for the plaintiffs have experience in the prosecution of cases involving the Act.

16. There are questions of fact and law common to the class as to whether the development of the Sports Complex as mandated by the Sports Authority Act will be in violation of the Clean Air Act, whether Defendant Sullivan has performed his duties so as to preclude such violation, and whether the Sports Authority Act, as construed by the New Jersey Supreme Court, is inconsistent with and repugnant to the Clean Air Act.

17. This action may be maintained as a class action pursuant to Rule 23(b)(1) since the prosecution of separate actions by individual members of the class would not create a risk of:

(a) inconsistent or varying adjudications with respect to individual members of the respective classes which would establish incompatible standards of conduct for the parties opposing the respective classes; and

(b) adjudications with respect to individual members of the respective classes which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications and would substantially impair or impede their ability to protect their interests.

18. This action may be maintained as a class action pursuant to Rule 23(b)(2) since defendants have acted and refused to act on grounds generally applicable to plaintiffs and members of their respective classes, thereby making appropriate final injunctive relief

against defendants and in favor of the plaintiffs and the members of their respective classes.

19. This action may be maintained as a class action pursuant to Rule 23(b)(3) since the questions of law and fact common to members of the respective classes as set forth herein predominate over any questions affecting only individual members, and this class action is superior to other available methods for the fair and efficient adjudiciation of the controversy. This action may be maintained as a class action pursuant to Rule 23(b)(3) since:

(a) Individual members of the respective classes have no cognizable interest in individually controlling the prosecution of separate actions;

(b) This is the first litigation concerning the controvery commenced by any member of the respective classes;

(c) It is clearly desirable to concentrate the litigation of the claims contained herein in this forum; and

(d) There are no unresolvable difficulties likely to be encountered in the management of this action as a class action.

V. FACTUAL ALLEGATIONS.

20. The Clean Air Act requires that each State be primarily responsible for creating an implementation plan by which the State will achieve and maintain air

quality standards to be promulgated by the Administrator of the United States Environmental Protection Agency. Such a plan must, inter alia, contain a procedure by which the location of new sources of air pollution must be reviewed prior to construction or modification. 42 U.S.C.A. Section 1857c-5(a)(2)(D).

21. The Sports Authority Act authorizes and empowers the Sports Authority to create a Sports Complex in the Hackensack Meadowlands, N.J.S.A. 5:10-6. This has been held by the Supreme Court of New Jersey to be a legislative mandate that the complex must be located in the Meadowlands, and that the Court had no power to challenge that decision.

> "However, the decision to so locate the complex was made by the Legislature and, as we noted in our original opinion, 61 N.J. at 8, 292 A.2d 545, this Court cannot concern itself with the wisdom or policy of the legislative action."

In re Sports Complex in the Hackensack Meadowlands, 62 N.J. 248, 300 A.2d 337, 340 (1973).

22. The Clean Air Act requires that the states adopt transportation control strategies as a part of their implementation plans. The strategies submitted by New Jersey were disallowed by the United States Court of Appeals for the District of Columbia Circuit on January 31, 1973. New Jersey has not since submitted transportation control strategies that have been accepted by the Administrator, as required by the Clean Air Act. Accordingly, as required by said Act, the Administrator has imposed a transportation control

strategy on the State. See generally 38 Fed. Reg. 17782, et seq. However the Administrator has also said that Defendant Sullivan, Commissioner of the New Jersey Department of Environmental Protection has indicated the State would submit a transportation control strategy as soon as possible. Because the Administrator has disapproved that part of the State's Plan "solely based upon the lack of timely submittal of the required plan", he has indicated that should one be submitted, "The Environmental Protection Agency will then revise this disapproval notice as it is deemed appropriate." 38 Fed. Reg. 16550, 16560.

23. It does not appear that any of the proposals contemplated by the State include avoidance of allowing the improper placement of traffic generating sources of air pollution such as sports complexes. See 38 Fed. Reg. at 16560.

VI. CAUSES OF ACTION

A. Conflict of the New Jersey Sports And Exposition Authority Law with the Federal Clean Air Act.

COUNT I

24. The Sports Authority Act is irreconcilably inconsistent with the Clean Air Act in that the New Jersey Supreme Court has decided the Sports Complex must be located in the Hackensack Meadowlands, whereas the Clean Air Act provides that no pollution generating facility may be located in an area where it might cause violations of Federal Air Quality Standards.

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B. Illegal use of Plaintiffs' Taxes.

COUNT I

25(a) State Tax revenues appropriated to the Sports Authority have been used to proceed illegally with construction of the Sports Complex, (b) if such complex is built, it is unlikely that it can be operated other than in violation of the Clean Air Act.

C. Failure of the Sports Authority To Comply With the Clean Air Act and Regulations Thereunder.

COUNT I

26. The Sports Authority has failed to secure a permit to construct, modify or enlarge the parking lots for the Sports Complex as required by notice in 38 F.R. 17782, 17790, 40 C.F.R. Section 52, 1590.

D. Equity

27. Accordingly, unless and until the relief demanded in this complaint is granted, plaintiffs have good reason to believe that the Sports Authority will construct a parking lot of 25,000 spaces, which will be filled on an undetermined but frequent basis. This will cause a massive increase in vehicular miles traveled in the surrounding area, in addition to very high and dangerous local concentrations of pollution at the Sports Complex site itself. Because this highly unhealthy instrumentality has been constructed in violation of law, plaintiffs will suffer immediate and irreparable harm should construction be continued.

28. Plaintiffs have no adequate remedy at law.

VII. PRAYER FOR RELIEF

Wherefore, Plaintiffs pray that the court quickly take all steps necessary to hear this action at the earliest possible date, advance this case on the docket, cause this case to be in every way expedited and heard and upon such hearing to:

1. Issue a declaratory judgment that the New Jersey Sports and Exposition Authority Law is null and void to the extent that it authorizes and mandates construction and operation of a sports complex in the Hackensack Meadowlands, and that such construction and operation is or would be in violation of Federal law and the United States Constitution.

2. Issue an order to the defendants to show cause why a preliminary injunction should not issue according to the terms of paragraph 3, infra.

3. Permanently enjoin and restrain the defendants and all persons acting for them in their place from causing the sports complex or allowing it to be caused to be constructed in the Hackensack Meadowlands.

4. Allow plaintiffs the costs herein and attorneys' fees and such other relief as appears to the court to be necessary or equitable or just.

MEZEY & MEZEY

Attorneys for Plaintiffs

By s/
FREDERICK C. MEZEY

SUPREME COURT, U. S. 73-236
SEP 19 1973
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

73-

No. 236

NEW JERSEY CITIZENS FOR CLEAN AIR, INC., *et al.*,

Petitioners,

vs.

NEW JERSEY SPORTS AND EXPOSITION AUTHORITY,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Opinions Below

The opinion of the New Jersey Supreme Court affirming the state administrative agency hearing involved is reported in *In re Sports Complex Hackensack Meadowlands,* 62 N. J. 248, 300 A. 2d 337 (1973). The opinion directing the hearing and defining its scope is reported in

New Jersey Sports and Exposition Authority v. *McCrane*, 61 N. J. 1, 292 A. 2d 545 (1972), appeal dismissed 409 U. S. 943 (1972). This latter opinion upheld the constitutionality of the New Jersey Sports and Exposition Authority Law. N.J.S.A. § 5:10-1 *et seq.*

Jurisdiction

The Petitioner purports to predicate jurisdiction upon 28 U.S.C. §1257(3).

Questions Presented

1. Whether this Court should review the affirmance by the highest court of the State of a factual determination by State administrative agencies made pursuant to a State statute of limited application?

2. Whether this Court should entertain a Petition which seeks to invoke as the basis for this Court's jurisdiction Federal Regulations which were not even proposed until after the determination by the Supreme Court of New Jersey, did not become effective until after the filing of the Petition with this Court, and have not yet been implemented in accordance with their terms?

Statutes and Regulations Involved

The statutes and regulations primarily involved in these proceedings are the following:

1. Section 23 of the New Jersey Sports and Exposition Authority Law. N.J.S.A. § 5:10-23.

2. Sections 110, 304 and 307 of the Clean Air Act. 42 U.S.C. §§ 1857c-5, 1857-2 and 1857-5.

3. The "Complex Source" regulations promulgated pursuant to the Clean Air Act, 38 Fed. Reg. 15834 (1973), on June 18, 1973.

Statement of the Case

This case was previously before this Court on a prior appeal from the Supreme Court of New Jersey which was dismissed for want of a substantial federal question. In the prior proceedings the Supreme Court of New Jersey had upheld the constitutionality of the New Jersey Sports and Exposition Authority Law. This law created the New Jersey Sports and Exposition Authority (herein referred to as "the Authority"), a public body corporate and politic empowered to build a sports complex in the Hackensack Meadowlands in the State of New Jersey. N.J.S.A. 5:10-6 a. The Authority is authorized to issue revenue bonds for its public purposes and is given the right of eminent domain. N.J.S.A. 5:10-6 b., 9 and 10. One section of the statute is pertinent to the present Petition:

> "It is the express intent of the Legislature that the authority in undertaking the meadowlands complex shall consult with the Meadowlands Commission and the Department of Environmental Protection* with respect to the ecological factors constituting the environment of the Hackensack meadowlands to the end that the delicate environmental balance of the Hackensack meadowlands be maintained and preserved." (N.J.S.A. 5:10-23).

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* Herein referred to simply as the Hearing Agencies.

The Supreme Court of New Jersey construed this statute in *New Jersey Sports and Exposition Authority* v. *McCrane, supra,* 61 N. J. at 32-33, 292 A. 2d at 561:

> "In view of the legislative history and particularly the strong language of section 23, we are unanimously of the view that an obligation has been imposed upon the Authority to present its proposal for site location to the Meadowlands Commission and the Department of Environmental Protection, and seek their opinion that in using such site the 'delicate environmental balance of the Hackensack meadowlands may be maintained and preserved.' This presentation should be made after public notice of the time and place thereof, and actual notice to the parties to the present action. At such time the Authority and all interested persons should be permitted to present their views on the subject. Although section 23 speaks of the Meadowlands Commission and the Department of Environmental Protection, we see no reason why the presentation could not be made to both agencies at the same time. In our view the full record should be and can be made expeditiously at that time, to the end that if any further review is sought it may be heard and disposed of upon that record."

The hearing which is the subject of this Petition thus was held solely pursuant to Section 23 of the New Jersey Sports and Exposition Authority Law. It was not held pursuant to any other statute or regulation, state or federal. The hearing, which commenced on July 10, 1972 and continued daily for an uninterrupted period of five weeks until it was concluded on August 11, 1972, covered

a wide range of environmental matters (all scientific and factual in nature) including the following:

1. The ecology of the Hackensack Meadowlands Region;
2. The location of the proposed Sports Complex within the Meadowlands;
3. Alternative sites considered;
4. Land form and geology of the area;
5. Vegetation of the area;
6. Wildlife of the area;
7. Water quality in the area;
8. The site plan;
9. The proposed site work;
10. Availability of electric energy;
11. Availability of an adequate potable water supply;
12. Availability of adequate sanitary sewage capacity;
13. Storm water runoff;
14. Disposal of solid wastes generated by the Sports Complex;
15. Disposition of excavated material unsuitable for foundations;
16. Volume and source of fill to be used during construction;
17. Noise pollution;
18. Traffic; and
19. Air quality.

It is not Respondent's intention to comment upon the voluminous factual record which was made before the Hearing Agencies during the 25 days of hearings, nor upon Petitioners' inaccurate and sometimes misleading characterization of the facts since they are largely irrelevant to a determination of this Petition.

On September 25, 1972, the Hearing Agencies issued their findings (Pet. App. 244a-261a).* With regard to air pollution the Hearing Agencies specifically determined that it was unlikely that any of the federal ambient air quality standards (40 C.F.R. 50.1 *et seq.*) promulgated pursuant to Section 109 of the Clean Air Act (42 U.S.C.A. §1857c-4) would be violated when the sports complex becomes operational in 1975, and measures were included in their decision to insure that they would not be. (Pet. App. 260a-262a). These findings were accepted and adopted by the Commissioner of the Department of Environmental Protection and the Chairman of the Hackensack Meadowlands Development Commission (Pet. App. 262a-263a).

On appeal to the Supreme Court of New Jersey, that Court concluded that "the kind of hearing we suggested was held", and affirmed the determination of the Hearing Agencies. *In re Sports Complex Hackensack Meadowlands,* 62 N. J. 248, 300 A. 2d 337 (1973). In its opinion the Supreme Court made the following comments with regard to the questions raised by Petitioners as to air pollution:

> "A considerable part of the hearing was concerned with projections of the impact of the complex on air quality from the broad point of view of the public health. While the statutory obligation imposed on the Authority to consult with the named agencies was concerned only with the 'delicate environmental balance' of the meadowlands, our remand was sufficiently comprehensive to include the broader issue and the hearing agencies rightly concerned themselves with it.

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* References are to the Petitioners' Appendix.

"• • • It is also argued that projections of air pollution emanating from the completed project indicate that standards established under the Federal Clean Air Act (42 U.S.C.A. §1857, et seq.) will be violated and will result in a denial of due process and equal protection, as well as infringe on the implicit constitutional right to a healthful environment. As a corollary, the argument is made that it is beyond the police power of the State to allow the construction of a project demonstrably dangerous to the public health.

"*These contentions lack validity. It has not been demonstrated that the complex will be dangerous to the public health. Careful consideration was given to the question of air pollution.* The record indicated that on-site facility emissions from the complex will be of minor significance on air quality and that the real concern was with motor vehicle emissions.

• • •

"The hearing agencies found that the complex will not interfere with the State of New Jersey achieving the national ambient air quality standards for sulphur dioxide, particulates, and oxidents (since oxident standards will be achieved by 1975 the hydrocarbon standard does not apply). It was also found that under conditions of extreme atmospheric stagnation and high football activity, motor vehicles in the complex could conceivably cause the national standard for carbon monoxide to be exceeded, but not more than once per season.* As

* The national standard for carbon monoxide is 35 ppm. "not to be exceeded *more* than once per year." (40 C.F.R. 50.8).

heretofore noted, the approval given the site and proposed use calls for establishment of a monitoring system to detect air pollution with alternative specifics to achieve and maintain acceptable air quality.

"Actually, it is highly speculative to try and estimate air pollution in 1975 when the project will have completed its race track, football stadium and parking area, or in 1990 when the entire complex is scheduled for completion. There are too many variables in the overall picture." 62 N. J. at 253-55, 300 A. 2d at 340. (Emphasis added).

The Supreme Court of New Jersey then went on to point out that "certainly the Sports Authority will be subject to the Clean Air Act," that in the development and operation of the sports and exposition complex the Authority must conform to federal standards, and that the "act empowers the Federal Administrator to bring suit directly in the federal court to restrain air pollution in violation of the established standards should any state fail to enforce its implementation plan effectively." 62 N. J. at 255, 300 A. 2d at 340-1; 42 U.S.C. §1857c-8.

The Supreme Court of New Jersey rendered its decision on February 5, 1973, and on February 15, 1973 Petitioners filed a Petition for Rehearing which was denied on March 6, 1973. On March 19, 1973 they filed a "*Re*petition for Rehearing". This is a paper which does not exist under New Jersey appellate practice and if considered merely as a Petition for Rehearing was out of time. (Rule 2:11-6 of Rules Governing the Courts of the State of New Jersey). The *Re*petition for Rehearing was likewise denied on May 2, 1973. As will hereinafter appear both the Petition and the *Re*petition raised new

matters not previously considered which are now being asserted as the basis for the Petition for Writ of Certiorari filed with this Court.

Reasons for Denying the Petition

What is basically involved in the Petition before this Court is a factual determination by state administrative agencies made solely pursuant to a state statute of limited application, and the scope of judicial review thereof as a matter of state law. The hearing was not held pursuant to the Federal Clean Air Act; it did not involve the validity of a state implementation plan promulgated under that Act; and it did not affect or impair plaintiff's rights under that Act. Under the circumstances the Petition should be dismissed for want of a substantial federal question.

I.

Plaintiffs' Rights Under The Clean Air Act Remain Unimpaired By The Proceedings Below

It is perhaps significant that Petitioners fail to define with precision what rights under the Clean Air Act were denied them or their members* in the proceedings below, and what sections of that statute define those rights. Since the sports complex will not be completed for several years Petitioners cannot complain of the present violation of any rights. The Supreme Court of New Jersey was

* It is submitted that as alleged environmental groups the Petitioners have no rights separate from the rights of their members which they have standing to assert in any event under the Clean Air Act. *Sierra Club* v. *Morton*, 405 U.S. 727 (1972).

careful to point out that "the Sports Authority will be subject to the Clean Air Act" and that "in the development and operation of the sports and exposition complex the Authority must conform to" the federal ambient air quality standards. If the Authority should fail to comply with those standards (or with any other requirement of the Clean Air Act) in the future, Petitioners' remedy lies in the citizens' suit provisions (Section 304) of that Act to protect those rights. (42 U.S.C.A. §1857h-2).

The speculative nature of Petitioners' position in these proceedings is illustrated by their reference to "two actions presently pending which could have a substantial effect on this case and petitioners' rights thereunder." (Pet. 23). The first, *Marianne Wuillamey et al.* v. *David A. Werblin, et al.*, was a suit instituted in the United States District Court for the District of New Jersey on July 26, 1973 to enjoin construction of the sports complex. The plaintiffs were the President and the Chairmen of three of the alleged environmental groups which are Petitioners before this Court (Pet. App. 319a). That suit was dismissed on August 28, 1973 under Rule 12(b) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted, the court observing that "the completed Complex will of course have to comply with whatever final pollution standards are promulgated under the authority of the Clean Air Act," and that an estimate of possible air pollution generated by the Complex in 1975 after it is completed "is, at best, highly speculative." (Resp. App. 3a, 7a, 9a). The second was a letter sent by Petitioners on July 26, 1973 to the Administrator of the Environmental Protection Agency demanding that he proceed pursuant to 42 U.S.C.A. §1857c-8 to prevent construction of the Authority's parking facilities which were alleged to be in violation of the transportation control plan "imposed" on the State of New Jersey by the

Administrator (Pet. App. 315a). The Administrator quite properly pointed out in his reply dated August 16, 1973 that the parking lot construction review provision upon which Petitioners relied was really only "a notice of proposed rulemaking, pursuant to Section 110(c) of the Clean Air Act," and that final regulations would be promulgated by October 15, 1973, citing 38 Fed. Reg. 17782, 17790 (July 3, 1973). He also pointed out that Petitioners' remedy, as provided by Section 304 of the Clean Air Act, is a suit against one who is alleged "to be in violation" of an emission standard under the Act. 42 U.S.C.A. §1857h-2(a) (Resp. App. 1a). Petitioners do of course concede that the sports complex (which will not be completed for several years) is not presently in violation.

II.

The Proceedings Below Did Not Involve The Validity Of New Jersey's Implementation Plan Under The Clean Air Act

Section 110 of the Clean Air Act prescribes the administrative procedure for the promulgation and adoption of plans for the implementation, maintenance, and enforcement of the federal ambient air quality standards within each State. 42 U.S.C.A. §1857c-5. The portions of the Act which are here pertinent became effective on December 31, 1970 and required each state to prepare a plan for implementing federal ambient air quality standards to be promulgated by the Administrator of the Environmental Protection Agency. 42 U.S.C.A. §§1857c-4, 1857c-5. The Administrator promulgated these standards on April 30, 1971. 36 Fed. Reg. 8186 (1971); 40 C.F.R. 50.1 *et seq.*

New Jersey's implementation plan was timely submitted to the Administrator on January 26, 1972. 38 Fed. Reg.

17782 (1973). At that time, as permitted by the Act, §1857c-5(e)(1), a number of States (including New Jersey) requested extensions of time to comply with certain of the standards. On May 31, 1972 the Administrator approved New Jersey's plan, granting the extensions as requested. 37 Fed. Reg. 10842 (1972).

Contrary to the suggestion of the Petitioners (Pet. 10, 16, 17) the validity of New Jersey's implementation plan was in no way involved in the proceedings below which was not the proper forum in which to contest validity in any event (as will hereinafter appear). Indeed it was not until after the Supreme Court of New Jersey had rendered its decision on February 5, 1973 that the Petitioners asserted for the first time in their Petition for Rehearing filed February 15, 1973 that New Jersey's implementation plan was invalid (Pet. App. 273a *et seq.*). The basis for this assertion was unrelated to the sports complex. It was a case decided fifteen days before by the United States Court of Appeals for the District of Columbia. *Natural Resources Defense Council, Inc.* v. *Environmental Protection Agency,* 475 F. 2d 968 (D. C. Cir. 1973). In that case the Court of Appeals decided that the Administrator had erred in granting extensions to the several states. In ordering those extensions rescinded the Court carefully prescribed procedures to implement its decision. Those procedures have been and are being carefully followed under the close scrutiny of the Court of Appeals (Resp. App. 12a-18a). In the case of New Jersey the Administrator proposed an implementation plan for the State on July 3, 1973. 38 Fed. Reg. 17782.* The plan was to have become

* It is intimated in the Petition (p. 19) that the Sports Authority was delinquent in failing to obtain a permit to build a new parking facility in the sports complex. However, as indicated above, the transportation control plan of which these provisions covering new parking facilities are but a part is only *proposed* by the Administrator.

effective on August 15, 1973, after a series of public hearings and opportunity to submit written comments, which it was acknowledged "may lead the Administrator to adopt final regulations that differ in important ways from this proposal." 38 Fed. Reg. 17782, 17787, (1973).

The Court of Appeals for the District of Columbia, however, has recently granted the Administrator's request that the deadline for promulgation of all such plans be extended to October 15, 1973. 38 Fed. Reg. 21505 (Aug. 9, 1973). When New Jersey's implementation plan is ultimately adopted (and in whatever form), Petitioners' sole right of review will lie in the United States Court of Appeals for the Third Circuit. 42 U.S. C.A. §1857h-5(b)(1); *The Anaconda Company* v. *Ruckelshaus,* —— F. 2d —— (10th Cir., August 8, 1973). That right of review was not impaired by the proceedings below.

III.

The Complex Source Regulations Were Not Proposed Until After The Opinion Below, Have Not Yet Been Implemented, And Can Have No Bearing On These Proceedings

Throughout the Petition it is intimated that the federal "Complex Source" regulations and the review procedures which remain to be prescribed thereunder have some bearing on the proceedings below. (Pet. 3, 11, 14, 18, 21, 22, 24, 25, 27, 29, 34). Petitioners first attempted to inject these regulations into this case in their "*Re*petition for Rehearing" filed out of time over a month after the decision of the New Jersey Supreme Court. The *Re*petition was filed on March 19, 1973 "on the basis of a

new regulation issued on March 8, 1973" according to Petitioners. (Pet. App. 289a). Actually this statement was somewhat misleading. What was involved was not in fact a new regulation, but an announcement by the Administrator of the Environmental Protection Agency of his intention to draft a new regulation governing the construction of facilities ("Complex Source") which may result in increased emissions from motor vehicle activity. The announcement indicated that the regulation would "further provide that each State must have procedures whereby, prior to construction or modification of such sources, the State will be able to determine whether the construction or modification of the complex source would cause violations of a control strategy or interfere with the attainment or maintenance of the national ambient air standards." 38 Fed. Reg. 6279-80.

Following this advance notice, the proposed regulations were published on April 18, 1973. 38 Fed. Reg. 9599. On June 18, 1973 the "Complex Source" regulations as finally adopted were promulgated. 38 Fed. Reg. 15834 (1973).

It is clear that these new regulations as promulgated have yet to be implemented, and as such have no independent force or effect even today. Under the terms thereof all States were required to submit revisions of their implementation plans to comply with the new requirements involving procedural review of new "Complex Sources", no later than August 15, 1973. After submission the Environmental Protection Agency has two months (until October 15, 1973) to review and approve or disapprove the revisions and an additional two months (until December 15, 1973) to propose and promulgate regulations to replace any disapproved State procedures. 38 Fed. Reg. 15834-5.

We are not aware that "Complex Source" review procedures have been approved as yet by the Environmental Protection Agency for any of the 50 states (including New Jersey). Although it may be conceded that the regulations contemplate some uniformity in these review procedures (38 Fed. Reg. 15834, 36), it is difficult to conceive how such review procedures can be applied (when they are finally promulgated and approved) to an administrative hearing which was held over a year before their adoption (as Petitioners apparently are suggesting in Points I and II of their Petition).

CONCLUSION

For the foregoing reasons it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

JAMES C. PITNEY,
JOHN W. BISSELL,
Attorneys for Respondent.

Of Counsel:

PITNEY, HARDIN & KIPP,
570 Broad Street,
Newark, New Jersey, 07102.

Certificate of Service

I, JAMES C. PITNEY, a member of the Bar of the Supreme Court of the United States, hereby certify that on this 19th day of September, 1973, three copies of Respondent's Brief in Opposition to Petition for Writ of Certiorari were served by first class mail, postage prepaid, on the following attorneys:

Frederick C. Mezey, Esq.,
Mezey & Mezey,
93 Bayard Street,
New Brunswick, New Jersey 08901.

Ralph W. Chandless, Esq.,
Chandless, Weller & Kramer,
84 Main Street,
Hackensack, New Jersey 07601.

Malcolm S. Zlotkin, Esq.,
Shackleton & Kelly,
Lacy Road at Route 9,
Forked River, New Jersey 08731.

I further certify that all parties required to be served have been served.

JAMES C. PITNEY,
570 Broad Street,
Newark, New Jersey 07102,
Attorney for Respondent.

APPENDIX A

Letter from United States Environmental Protection Agency to Frederick C. Mezey, dated August 16, 1973

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D. C. 20460
August 16, 1973

Office of
Enforcement and General Counsel

Mr. Frederick C. Mezey
Mezey and Mezey
Counsellors at Law
93 Bayard Street
New Brunswick, New Jersey 08903

Re: No. 5606

Dear Mr. Mezey:

The Administrator has asked me to reply to your letter of July 26, 1973.

The parking lot construction review regulation to which you refer in your letter was not "imposed" on the State of New Jersey on June 22, 1973. Rather, it constituted a notice of proposed rulemaking, pursuant to Section 110(c) of the Clean Air Act, 38 Fed. Reg. 17782, 17790 (July 3, 1973). Final regulations on transportation controls will be promulgated by October 15, 1973.

In addition, because enforcement of an implementation plan by the Environmental Protection Agency falls within the category of prosecutional discretion, it is our opinion

that non-enforcement in a particular instance does not constitute a non-discretionary duty of the Administrator under Section 304 of the Act. The appropriate use of Section 304 in such situations is to commence a civil action against the alleged violator of the implementation plan.

Sincerely,

ROBERT L. BAUM
Associate General Counsel
Air Quality and Radiation Division

cc: Mr. Gerald M. Hansler, Regional Administrator
Mr. Martin Green, Department of Justice

APPENDIX B

Opinion and Order of the United States District Court, District of New Jersey, *Marianne Wuillamey, et al.* v. *David A. Werblin, et al.*

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MARIANNE WUILLAMEY, BARBARA EISLER and JAMES DRAGO,
Plaintiffs,

v.

DAVID A. WERBLIN and RICHARD J. SULLIVAN
Defendants.

CIVIL ACTION No. 1099-73

Appearances:

MEZEY & MEZEY, Esqs.
By: FREDERICK C. MEZEY, Esq.
Attorneys for Plaintiffs

PITNEY, HARDIN & KIPP
By: JAMES C. PITNEY, Esq.
Attorneys for Defendant David A. Werblin

JOSEPH M. CLAYTON, JR., Deputy Attorney General
Attorney for Defendant Richard J. Sullivan

COOLAHAN, District Judge:

This is a suit brought by certain individuals and environmental organizations, on behalf of themselves and

those similarly situated, seeking an injunction under Fed. R. Civ. Pro. 65 against construction of the Hackensack Meadowlands Sports Complex authorized under the New Jersey Sports and Exposition Authority Law, N.J.S.A. 5:10-1 *et seq.*[1] Plaintiffs also seek a judgment to the effect that the New Jersey statute is fatally inconsistent with the Clean Air Act, 42 U.S.C. § 1857 *et seq.*, and must therefore be enjoined under the Supremacy Clause. *Gibbons* v. *Ogden*, 22 U. S. (9 Wheat.) 1 (1824).

Federal jurisdiction is based on the claim that the state statute conflicts with a federal statute which, by virtue of the Supremacy Clause, is controlling. As stated in *Swift & Company* v. *Wickham*, 382 U. S. 111 (1965) at 127, ". . . cases of conflict [of a state statute] with a federal statute . . . follow their normal course in a single-judge [federal district] court." Other bases alleged for jurisdiction of this court are 28 U.S.C. § 1331 (federal

---

[1] Among the environmental and conservationist organizations are New Jersey Citizens for Clean Air, Inc. (whose president is plaintiff Eisler), Hoboken Environment Committee, Hudson River Fisherman's Association, Weehauken Environment Committee, C.A.P. A.B.L.E., Save the Palisades Association (chairman Drago), Citizens Committee of Hudson County, and the Hudson County Citizens for Clean Air.

Defendant Werblin is the Chairman of the New Jersey Sports and Exposition Authority. Defendant Sullivan is the Commissioner of the New Jersey Department of Environmental Protection.

This Opinion will not address the question of whether this action is, or can be brought under Fed. R. Civ. Pro. 23 as a class action.

question) and 42 U.S.C. § 1857h-2(a) (establishment of citizen's right to bring suit under the Clean Air Act).[2]

No party to this proceeding has addressed the question of whether these particular plaintiffs, as individuals, possess the requisite standing to bring suit. For a plaintiff to possess standing, there must be claimed injury to a *legally protected* interest, *i.e.*, ". . . a wrong which directly results in the violation of a legal right." *Alabama Power Company* v. *Ickes,* 302 U. S. 464, 479 (1938). Although the parties' contentions concern themselves almost exclusively with air pollution, there apparently does not as yet exist a legally protected interest, *per se,* in maintaining pollution-free air. That these plaintiffs, as individuals, do possess sufficient standing to secure this court as a proper forum can, however, be descried from a reading of the policy and purposes of the Clean Air Act itself. As stated in 42 U.S.C. § 1857(a)(2), ". . . the growth in the amount and complexity of air pollution brought about by . . . the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare . . ." And in 42 U.S.C. § 1857(b)(1) it is stated that the purposes of the Clean Air Act include protection and enhancement of ". . . the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." Enact-

[2] The court finds that jurisdiction does not lie under 42 U.S.C. § 1857h-2(a), as that section pertains only to an action brought ". . . to enforce . . . an emission standard or limitation . . .," and to an action in the nature of mandamus against the Administrator of the federal Environmental Protection Agency. Because no final standard or limitation exists, none can be enforced. And the Administrator has not been named as a party-defendant in the present proceedings.

ment of the Clean Air Act into law was plainly intended to protect the health and welfare of, among others, these plaintiffs, who are citizens and inhabitants of the United States. The impairment of the plaintiffs' health that is alleged to be a probable deleterious consequence of construction of the Sports Complex constitutes a sufficiently grave invasion of a legally protected interest to confer standing.

The Sports Complex is currently planned to comprise a large stadium and a race track. The stadium alone is to have a capacity of around 75,000 persons, and parking is to be provided for about 25,000 motor vehicles. The Complex is to be financed by selling close to $270,000,000 worth of bonds, to private investors.

The proposed Complex has produced extensive litigation in the state courts. *New Jersey Sports and Exposition Authority* v. *McCrane*, 119 N. J. Super. 457 (L. Div. 1972), *aff'd as modified* 61 N. J. 1 (1972), exhaustively deals with the state issues presented. See also *In re. Sports Complex Hackensack Meadowlands*, 62 N. J. 248 (1973).

Plaintiffs in the instant litigation seek injunctive relief against the continued construction of the Complex. In this Circuit, there are four "essential criteria" that must be satisfied by one seeking a preliminary injunction. Succinctly put in *Winkleman* v. *New York Stock Exchange*, 445 F. 2d 786, 789 (3d Cir. 1972), these comprise ". . . (1) irreparable harm to appellants absent such stay; (2) absence of substantial harm to other interested parties; (3) absence of harm to the public interest; (4) a likelihood that appellants would prevail on the merits." Plaintiffs' argument appears to be that, unless an injunction issues,

the Complex when constructed and the vehicular traffic it generates must be in violation of the applicable national ambient air quality standards found in 40 C.F.R. § 50.1 *et seq.*

Plaintiffs in the case at bar do not seek to abate a presently existing nuisance. Rather, they seek equitable relief against a possible future violation of federal air quality standards. The extensive hearings conducted between July 10 and August 11, 1972 by the New Jersey Department of Environmental Protection concluded, however, that ". . . the Sports Complex will not interfere with the State of New Jersey achieving the National Ambient Air Quality Standards for sulphur dioxides [sulphur oxides, 40 C.F.R. §§ 50.4, 50.5], particulates [40 C.F.R. §§ 50.6, 50.7], and oxidants photo-chemical oxidants, [40 C.F.R. § 50.9] . . ." Hearing Officers' Report and Recommendations at 55. This finding of fact, though pertaining to events *in futuro,* is sufficiently buttressed by technical expertise to render it unassailable before a court of law. An estimate of possible air pollution generated by use of the Complex in 1975 (its scheduled completion date) is, at best, highly speculative. Such speculation seems entirely to foreclose the plaintiffs' ability to demonstrate that, absent an injunction, they will suffer *any* harm, "irreparable" or other.[3]

---

[3] Should use of the Complex cause excessive pollution, those aggrieved have remedy in a suit at common law to abate a public nuisance. Further, 42 U.S.C. § 1857d(k) permits a federal injunction to abate excessive pollution on an emergency basis, on the application of the Attorney General. This section was recently invoked in the United States District Court for the Northern District of Alabama, Pointer, J., to curtail industrial production in Birmingham until a health emergency had abated. See also 42 U.S.C. § 1857d(g)(1), permitting similar abatement across state lines.

Appendix B

Since the plaintiffs at bar cannot carry their burden of showing irreparable harm to them absent injunction relief, it becomes unnecessary to consider the other *Winkleman* criteria. In passing, however, the court notes that, since the harm complained of is entirely *in futuro*, the likelihood is remote that plaintiffs could "prevail on the merits," *i.e.*, demonstrate that the national air quality standards will probably be exceeded. Accordingly, the application for a preliminary injunction against continued construction of the Complex is denied.

The plaintiffs also seek a judgment that N.J.S.A. 5:10-1 *et seq.* is repugnant to 42 U.S.C. § 1857 *et seq.*, and therefore void under the Supremacy Clause. Their attack is premised on the following syllogism: (1) The New Jersey statute, as interpreted by the New Jersey Supreme Court, requires that the Complex be located only in the Hackensack Meadowlands. (2) Placing the Complex in the Meadowlands must cause the national ambient air quality standards to be exceeded in the New Jersey-New York-Connecticut metropolitan region, or at least in that portion of the region adjacent to the Complex. (3) Therefore the state statute permitting the Complex to be constructed violates federal law.

The court is not persuaded by this argument for several reasons. First, as seen *supra*, there is no proof that the Complex will cause federally mandated pollution levels to be exceeded. Second, the New Jersey statute could be superseded by a federal statute *only* if the federal law expressed a Congressional intent to preempt the state's exercise of its power *in the same field*. As stated in *Schwartz* v. *Texas*, 344 U. S. 199, 202-03 (1952), "[i]t will not be presumed that a federal statute was intended to supersede the exercise of the power of the state unless

there is a clear manifestation of [Congressional] intention to do so." N.J.S.A. 5:10-1 *et seq.* does not concern itself with air pollution. Rather it simply permits a sports stadium and attendant facilities to be developed in one area of the Meadowlands. Since the subjects dealt with by the juxtaposed statutes are entirely different (an open-air hippodrome and air pollution), no claim can be heard that Congress intended to supercede the state's exercise of power *in the same field.* The completed Complex will of course have to comply with whatever final pollution standards are promulgated under the authority of the Clean Air Act. The court is sure that the Sports and Exposition Authority will obey the law. The fact that the standards may not, at some future point in time, be met does not constitute a question arising under the Supremacy Clause or, apparently, a question of any constitutional dimension. The court concludes that no question of federal preemption of or conflict with a state statute is presented under the Supremacy Clause.

Plaintiffs finally contend that a Clean Air Act regulation, 40 C.F.R. § 52.1590, which appears as part of the New Jersey proposed transportation control plan at 38 Fed. Reg. 17790 (July 3, 1973), has not been complied with by the defendants and that therefore the project is proceeding in violation of federal law. The regulation reads in pertinent part as follows:

> § 52.1590 Management of parking supply.
>
> (a) Definitions:
>
> (1) "Construction" means fabrication, erection, or installation of a parking facility, or any conversion of land to use as a facility.

Appendix B

. . .

(4) "Commenced" means the date on which an owner or operator and a contractor to, or affiliate of such owner or operator, enter into a binding agreement or contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or enlargement.

(5) Parking facility (also called "facility") means any facility, building, structure, or lot or portion thereof used primarily for temporary storage of motor vehicles.

(b) This regulation is applicable in all areas within the New Jersey portion of the New Jersey-New York-Connecticut Interstate Region. . . .

(c) No person, after the date of this proposed regulation, shall commence construction of any new parking facility or modify or enlarge any existing parking facility until he has first received from the Administrator or from an agency approved by the Administrator a permit stating that construction, modification, or enlargement of such facility will not interfere with the attainment of applicable Federal Air Quality Standards.

Plaintiffs' contention is that the defendants have never received a permit from the Administrator of the federal Environmental Protection Agency to construct their pro-

posed 25,000 vehicle parking lot. But 40 C.F.R. § 52.1590 is only a *proposed* regulation. 38 Fed. Reg. 21505 (Aug. 9, 1973) reports that the United States Court of Appeals for the District of Columbia Circuit ". . . has granted a request that the deadline for promulgation [of the New Jersey transportation control plan, 38 Fed. Reg. 17782-92] be October 15, 1973.". This court is not prepared to disregard the mandate of the Court of Appeals having direct responsibility for supervision and promulgation of the transportation control plan.

A proposed regulation may be modified or abandoned. It does not have the force of law. Since 40 C.F.R. § 52. 1590 is at this date not final, plaintiffs cannot be heard to complain that it is being violated.[4]

For the foregoing reasons it is ORDERED that the complaint be, and hereby is, dismissed. Costs shall not be awarded either party.

JAMES A. COOLAHAN,
United States District Judge

---

[4] The fact that the period during which the public may submit comments in writing to the Environmental Protection Agency has now, under 38 Fed. Reg. 21505, been extended until August 15, 1973 indicates that some parts of the transportation control plan may be modified or abandoned by October 15, 1973. Among these may be 40 C.F.R. 52.1590(c). Only if § 52.1590(c) is promulgated as a final regulation as of October 15, 1973 will the question of whether the phrase "the date of this proposed regulation" refers to July 3, 1973 or October 15, 1973, be ripe for resolution.

APPENDIX C

***Natural Resources Defense Council, Inc.* v. *Environmental Protection Agency*, Order of March 12, 1973**

(Original Filed—March 12, 1973)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1972

No. 72-1522

NATURAL RESOURCES DEFENSE COUNCIL, INC.,
Petitioner

v.

ENVIRONMENTAL PROTECTION AGENCY,
Respondent

No. 72-1598

FRIENDS OF THE EARTH, INC., METROPOLITAN WASHINGTON COALITION FOR CLEAN AIR, INC., MS. EUGENIE ANDERSON, ERIC PETER LEVINE,
Petitioners

v.

ENVIRONMENTAL PROTECTION AGENCY,
Respondent

No. 72-1810

Appendix C

NATURAL RESOURCES DEFENSE COUNCIL, INC., et al.,

Petitioners

v.

ENVIRONMENTAL PROTECTION AGENCY,

Respondent

No. 72-1941

NATURAL RESOURCES DEFENSE COUNCIL, INC., FRIENDS OF THE EARTH, INC., MS. HENRIETTA BARLOW, ERIC PETER LEVINE,

Petitioners

v.

ENVIRONMENTAL PROTECTION AGENCY,

Respondent

No. 72-1982

NATURAL RESOURCES DEFENSE COUNCIL, INC., FRIENDS OF THE EARTH, INC., JONN HERMAN, METRO CLEAN AIR COMMITTEE, CITIZENS ENVIRONMENTAL COUNCIL OF GREATER KANSAS CITY, MARK SHAPIRON,

Petitioners

v.

ENVIRONMENTAL PROTECTION AGENCY,

Respondent

No. 72-1985

Appendix C

NATURAL RESOURCES DEFENSE COUNCIL, INC.,

Petitioner

v.

ENVIRONMENTAL PROTECTION AGENCY,

Respondent

No. 72-2028

NATURAL RESOURCES DEFENSE COUNCIL, INC., FRIENDS OF THE EARTH, INC., COLORADO CITIZENS FOR CLEAN AIR, GERALD L. JENSEN, Esq., MARGA M. RASKIN,

Petitioners

v.

ENVIRONMENTAL PROTECTION AGENCY,

Respondent

No. 72-2159

NATURAL RESOURCES DEFENSE COUNCIL, INC., FRIENDS OF THE EARTH, INC., PAUL F. McCLAIN, PAM FORDING,

Petitioners

v.

ENVIRONMENTAL PROTECTION AGENCY,

Respondent

COMMONWEALTH OF KENTUCKY

Intervenor

Appendix C

Before: BAZELON, Chief Judge, WRIGHT and MACKINNON, Circuit Judges.

ORDER

On consideration of respondent's application for modification of this Court's order of January 31, 1973, and of petitioners' memorandum regarding respondent's motion for modification of order, it is

ORDERED by the Court that respondent's aforesaid motion is granted, and the order filed in the above-entitled cases on January 31, 1973, is hereby modified as follows:

Paragraph (4) of the order shall be changed to read as follows:

> (4) The Administrator shall, within two months after the date required for submission of a plan under paragraphs (3) or (9) of this order, approve or disapprove such plan or each portion thereof pursuant to the requirements of Section 110(a)(2), except that approval or disapproval of the portion of the implementation plan to be submitted pursuant to paragraph (9) of this order, to the extent such provisions are also necessary for the attainment of the standards, may be deferred until the time for approval or disapproval specified in that paragraph.

Paragraph (9) of the order shall be modified by deleting the last two sentences and adding the following:

> Respondent shall propose in the *Federal Register* no later than April 15, 1973, amendments to 40 C.F.R. Part 51 which will set forth the require-

ments for State implementation plan procedures necessary for the maintenance of the national standards. Such proposed amendments shall be promulgated no later than June 11, 1973. States shall be directed to submit implementation plan provisions to comply with such regulations no later than August 15, 1973. Such new plans shall be dealt with by the Administrator in the manner set out in paragraphs (4) and (5) of this order.

So ordered.

Dated: March 12, 1973

APPENDIX D

***Natural Resources Defense Council, Inc. v. Environmental Protection Agency*, Order of July 26, 1973**

(Original Filed—July 26, 1973)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1972

Nos. 72-1522, 72-1598
72-1810, 72-1941
72-1982, 72-1985
72-2028, 72-2159

NATURAL RESOURCES DEFENSE COUNCIL, INC., *et al.*,

Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

Before: Bazelon, Chief Judge; Wright and MacKinnon, Circuit Judges

ORDER

On consideration of Respondent's application for modification of this Court's order of January 31, 1973, as modified on March 12, 1973, it is

Appendix D

ORDERED by the Court that paragraph (5) of the order of January 31, 1973, be modified as follows:

(5) If any state fails to comply with the requirements of paragraphs (3) or (9) of this order, or if any state plan is determined by the Administrator not to be in accordance with the requirements of paragraphs (3) or (9) of this order, the Administrator shall prepare, publish, and promulgate regulations setting forth an implementation plan, or portion thereof, for the noncomplying state, following the procedures established in Section 110(c) except that proposal and promulgation of any such regulations shall be made in accordance with the following schedule:

(A) For regulations required due to a State's failure to comply with paragraph (3) of this order—

(i) Proposal of any such regulations by July 24, 1973, and

(ii) Promulgation of any such regulations by October 15, 1973, provided that any regulations requiring review of the construction, modification, or enlargement of parking facilities shall be applicable to such facilities beginning August 15, 1973;

(B) For regulations required due to a State's failure to comply with paragraph (9) of this order—

(i) Proposal of any such regulations by October 15, 1973, and

(ii) Promulgation of any such regulations by December 15, 1973.

Per Curiam

For the Court:

HUGH E. KLINE
Clerk

SUPREME COURT, U.S. 73-236

SEP 26 1973

MICHAEL RODAK, JR., CLERK

In The

Supreme Court of the United States

October Term, 1973

No. A-1154

NEW JERSEY CITIZENS FOR CLEAN AIR, INC., et al.,

Petitioners,

vs.

NEW JERSEY SPORTS AND EXPOSITION AUTHORITY,

Respondent.

ERRATTA

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ERRATTA

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iii	Citation for *Gunther* should be: *Gunther v. San Diego & Arizona Eastern Railroad Co.*, 382 U.S. 257, 86 S.Ct. 368, 15 L.Ed. 2d 308 (1965).
30	Second sentence after section a. should begin: "However, they were well aware that some air quality standards for all automobile related air pollutants were *currently* being violated. . . ."

Appendix

7a	Bold faced "Public Health and Welfare 42 Section 1857c" should be deleted.
15a	Bold faced "Public Health and Welfare" should be deleted.
63a	The following should be added directly above line 6, starting with "permitted by the Eleventh Amendment." Section 1857h-2. *Citizen suits-Establishment of right to bring suit* (a) Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf — (l) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent.
117a	Announcement dealing with Title 32 should be deleted.
124a	Announcement dealing with Title 41, and pages 125a, 126a, and 127a should be deleted.

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In The

Supreme Court of the United States

October Term, 1973

No. A-236 | 73 236

NEW JERSEY CITIZENS FOR CLEAN AIR, INC., et al.,

Petitioners,

vs.

NEW JERSEY SPORTS AND EXPOSITION AUTHORITY,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of New Jersey

PETITIONERS' REPLY MEMORANDUM

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42 U.S.C. Sec. 110(a)(2)(B)	8, 9
42 U.S.C. Sec. 110(c)	9
RULES CITED:	
40 C.F.R. Sec. 51.18	8, 9
OTHER AUTHORITIES CITED:	
36 Fed. Reg. 25233 (Dec. 30, 1971)	8
38 Fed. Reg. 6279 (March 8, 1973)	4
38 Fed. Reg. 17782 (Jul. 3, 1973)	5
38 Fed. Reg. 17790	6
38 Fed. Reg. 20851 (August 31, 1973)	6
Fed. Reg. 9599	8

In The

Supreme Court of the United States

October Term, 1973

No. A-236

NEW JERSEY CITIZENS FOR CLEAN AIR, INC., et al.,

Petitioners,

vs.

NEW JERSEY SPORTS AND EXPOSITION AUTHORITY,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

PETITIONERS' REPLY MEMORANDUM

This brief is submitted in reply to matters raised by Respondent, New Jersey Sports and Exposition Authority in its Brief in Opposition to Petition for Writ of Certiorari.

STATEMENT OF THE CASE

Respondent's Statement of the Case is inaccurate or misleading in several respects.

1. At page three of Respondent's Brief in Opposition (hereinafter Resp. Br.) it is stated that "This case was previously before this Court on a prior appeal from the Supreme Court of New Jersey which was dismissed for want of a substantial federal question." The present case has never been before this Court. The case referred to was *New Jersey Sports and Exposition Authority v. McCrane*, 61 *N.J.* 1, 292 *A.2d* 545 (1972), appeal dismissed 409 *U.S.* 943 (1972). Petitioners herein did not participate in the application for certiorari in 61 *N.J.* as the grounds asserted did not concern the air pollution issue. The petitioners herein were *amicus curiae* in the earlier case solely to represent environmental interests, and had no part whatever to do with the appeal of that case to this Court. The present case is based on the New Jersey Supreme Court decision repeated in 62 *N.J.* and concerns review of the environmental hearings ordered in 61 *N.J.*

2. It is stated at Resp. Br. 4, 5 that the hearing below "was held solely pursuant to Section 23 of the New Jersey Sports and Exposition Authority Law", which relates to the environmental balance of the Meadowlands, and that the hearings were concerned solely with scientific and factual matters. This is somewhat misleading. The New Jersey Supreme Court did order the hearings because of Section 23; however, the hearings did cover the legality of the construction and location of the Sports Complex with reference to the Clean Air Act, 42 *U.S.C.* Section 1847 *et seq.* On reviewing these hearings, the Court noted that this had been proper.

> "A considerable part of the hearing was concerned with projections of the impact of the complex on air quality from the broad point of view of the public health. While the statutory obligation

> imposed on the Authority to consult with the named agencies were concerned only with the 'delicate environmental balance' of the meadowlands, our remand was sufficiently comprehensive to include the broader issue and the hearing agencies rightly concerned themselves with it."

In re Sports Complex in Hackensack Meadowlands, 62 *N.J.* 248, 300 *A.2d* 337, 340 (1973). It should be noted that the remand resulted from the Court's determination that prior informal hearings had not been sufficient, and it was ordered at the request of the petitioners herein, whose primary concern had been air pollution. The respondent's position, that the Clean Air Act was irrelevant to the proceedings below, infers that construction of the complex could have proceeded regardless of the findings concerning air pollution. Such a position seems untenable.

3. It is stated at Resp. Br. 6 that the hearing agencies findings contained measures to insure that federal ambient air quality standards would not be violated, citing the hearing agencies' findings at pages 260 to 262 of the petitioners' appendix (hereinafter Pet. App.). Close examination shows that these "measures" provide no insurance that federal air quality standards will not be exceeded; the only measure even referring to these standards is a requirement that "studies" be undertaken to provide "facilities and operational procedures . . . in order to prevent any possible exceeding of federal air quality standards . . ." The meaninglessness of this requirement is illustrated by the fact, never refuted by the respondent, that federal air quality standards are *already* being violated in the area where the sports complex is to be located. See page 6 of the Petition for Writ of Certiorari (hereinafter Pet.).

4. Finally, the respondent complains at Resp. Br. 8 and 9 that the petitioners herein submitted a Petition and a Repetition for Rehearing to the New Jersey Supreme Court after it rendered its opinion on February 5, 1973 which "raised new matters not previously considered" and that the Repetition for Rehearing does not exist under New Jersey appellate practice. Suffice it to say that the New Jersey Supreme Court, in denying the Repetition, noted that the matter had been "duly presented to the Court" Pet. App. 299a. Contrary to the respondents contention, petitioners consider this a recognition of the propriety of the Repetition by the final authority on New Jersey appellate practice. As to the substance of the petitions, the matters raised were new because they did not exist at the time of the Court's decision and could thus only be raised in petitions for rehearing. The Petition for Rehearing was submitted because the New Jersey Supreme Court had based its determination that the sports complex would not violate federal clean air standards on the assumption that a valid state implementation plan was in effect which would preclude this, 300 A.2d, at 340, 341, Pet. App. 271a, whereas, in fact, this implementation plan had been invalidated by the District of Columbia Court of Appeals on January 31, 1973, five days before the decision below. *Natural Resources Defense Council v. Environmental Protection Agency*, 475 F.2d 968 (D.C. Cir. 1973). Furthermore, the D.C. Circuit stated that the Administrator acted *illegally* in approving this implementation plan; apparently, there never had been a valid plan in effect. The Repetition for Rehearing was submitted on the basis of an announcement made by the Administrator at 38 Fed. Reg. 6279 (March 8, 1973) that supported the interpretation of the Clean Air Act argued by the petitions in the Court below, which petitioners considered as warranting a review of the decision.

REPLIES TO REASONS FOR DENYING THE PETITION

I

The thrust of the first reason, "Plaintiffs Rights under the Clean Air Act Remains Unimpaired by the Proceedings Below", is that sources of air pollution may only be brought under control after they have been built and have started violating air quality standards. It is the position of the petitioners herein and of the plaintiffs in *Marianne Wuillamey et al v. David A. Werblin, et al*, cited at Resp. Br. 10, that such is not the substance of the Clean Air Act and the various regulations promulgated thereunder.

The plaintiffs in *Wuillamey* argued that the respondent herein was required to obtain a permit to commence construction of its 25,000 car parking facility pursuant to a transportation control plan proposed by the Administrator of the Environmental Protection Agency on June 22, 1973, published at 38 Fed. Reg. 17782 (July 3, 1973). The complaint was dismissed largely because there was no present exceeding of federal air quality standards by the inchoate complex itself and the above cited regulation had only been proposed, and there could thus be no current violation of it. This transportation control plan requires some explanation.

The proposed transportation control plan was issued pursuant to the order of the Court in *Natural Resources Defense Council v. Environmental Protection Agency, supra* as modified on March 12, 1973 and July 26, 1973, 38 Fed. Reg. 17782 (July 3, 1973). Paragraph (3) of that order required the states whose implementation plans had been invalidated by that case to submit complying plans for the attainment of federal air quality standards by certain deadlines; upon their failure to do so, paragraph (5) (as modified) required the Administrator to propose a complying plan for the defaulting states by July 24, 1973 and promulgate one by October 15, 1973 "provided that any regulations requiring review of the construction,

modification, or enlargement of parking facilities shall be applicable to such facilities beginning August 15, 1972". The plan proposed contained a section requiring permits for parking facilities under certain circumstances, which section stated "after the date of this proposed regulation" a permit would be required, 38 Fed. Reg. at 17790. An announcement by the Administrator published at 38 Fed. Reg. 20851 (August 31, 1973) stated that parking facility regulations were to be effective as of August 15, 1973 apparently in compliance with the Court's order.

This issue of the August 15 effective date, specifically for parking facility regulations, was argued extensively at the hearing which resulted in the dismissal of the complaint in *Wuillamey*. The Court's opinion made no mention of it, but referred solely to the "proposal" status of the plan as a whole. On the basis of this and other grounds, a notice of appeal to the Third Circuit Court of Appeals has been filed in *Wuillamey*; also, plaintiffs in *Natural Resources Defense Council v. Environmental Protection Agency*, have moved for a clarification of the order as to the effective date of parking facility regulations proposed by the Administrator.

As to the reply made by the Administrator to the petitioners' demand that he move against the respondent Sports Authority to enforce the transportation control plan, obviously the petitioners do not agree with his opinion of the effective date of parking facility regulations. Further, the respondent seems to have made an erroneous representation of something else the Administrator said in that reply. He did *not* say that "Petitioners' remedy, as provided by Section 304 of the Clean Air Act, is a suit against one who is alleged 'to be in violation' of an emission standard under the Act" Resp. Br. 11. Rather, in response to a specific demand that he enforce the plan's parking facility requirements, the

Administrator stated that such enforcement was discretionary with him, and that "The appropriate use of Section 304 in such situations is to commence a civil action against *the alleged violation of the implementation plan.*" Resp. App. 2a, (emphasis added). Of course, this was the position of the Wuillamey plaintiffs in bringing suit.

II

The respondent states that New Jersey's Implementation Plan was not involved in the proceedings below, and that in any event, they were not a proper forum to contest the validity of the plan. The first assertion is simply untrue. As indicated in the *Statement of the Case, supra,* the New Jersey Supreme Court's affirmance of the agencies' findings was at least in part predicated on the belief that a valid plan was in effect; the fact that this was not the case indicates the infirmity of the decision below.

The respondent claims that the state tribunals were improper fora to raise issues concerning state implementation plans, and that the validity of such plans may only be contested in the United States Court of Appeals for the Third Circuit. First, the New Jersey Supreme Court could properly decide that the existence of a valid implementation plan was a requisite to approving state environmental hearings findings that federal air quality standards would not be violated and apparently did so. Thus, anyone challenging those hearings has standing to assert the invalidity of such a plan. Second, the fact that the validity of an approved implementation plan can only be challenged in a given court has nothing whatever to do with the issue of the propriety of a project's being commenced without review under a valid plan that *should* have been approved and in effect at that time and has not been.

Replies to Reasons for Denying the Petition

III

The third reason given for denial of the writ is that "The Complex Source Regulations Were Not Proposed Until After The Opinion Below, Have Not Yet Been Implemented, And Can Have No Bearing On These Proceedings." In short, this reason is based on the dates of proposal and promulgation and effective dates of the regulations which, if in effect, would require a preconstruction review of the sports complex. Generally, the petitioners do not disagree with the dates as stated by the respondent, except that to the extent that preconstruction review of complex sources is necessary for the attainment of federal air quality standards as opposed to the maintenance thereof. The deadlines for such regulations would, according to the D.C. Circuit Court's order, be proposed by July 26 and promulgation by October 15, 1973.

However, the real issue here is misstated by the respondent. The issue is the correctness of the decision by the New Jersey Supreme Court. The petitioners argued below that the Clean Air Act and regulations *then in effect* required preconstruction review of sources of air pollution such as the sports complex. The complex source regulations, proposed as promulgated thereafter, established that the petitioners' contention was correct.

40 C.F.R. Section 51.18, as amended by 36 Fed. Reg. 25233 (Dec. 30, 1971), required preconstruction review of stationary sources, e.g., factories, in state implementation plans. New Jersey's plan had been submitted and approval as providing for such review. Section 110 (a)(2)(B) of the Act, 42 U.S.C. Section 1857c-5(a)(2)(B), requires state plans to contain all measures "necessary to insure this attainment and maintenance" of federal standards. At 38 Fed. Reg. 9599 the Administrator said "In the

Administrator's judgment, this amplification of the requirements of 40 C.F.R. Section 51.18 is a step necessary to insure the maintenance of the national ambient air quality standards. . . " The Administrator was thus indicating that to be valid, all implementation plans should have been submitted with complex source review provisions from the beginning. If the requirements of the Act had been followed, New Jersey would have had provisions for such review by July 31, 1972, at the latest. The E.P.A. promulgated national ambient air quality standards on April 30, 1971, and Section 110 of the Act 42 U.S.C. Section 1857c-5 requires the states to submit their plans within nine months of such promulgation, i.e., by January 31, 1972. The Administrator is then required by Section 110(c), 42 U.S.C. 1857c-5(c) to approve or disapprove the plan within four months, and if a plan is disapproved, to promulgate one within six months of submission, or July 31, 1972.

This means two things: (1) The court below was incorrect in assuming the state's citizens were protected from violations of federal air quality standards by a valid implementation plan *even before* that plan was invalidated by the District of Columbia Court of Appeals; (2) Due to lack of compliance with the Act by the New Jersey Department of Environmental Protection and the United States Environmental Protection Agency, there has been a hiatus in regard to protective regulations between July 31, 1972 and the present, when the people of New Jersey had a right to such regulations. The Sports authority hopes to push its complex through the hiatus and gain vested rights before some kind of meaningful controls can be imposed on it. It should not be allowed to profit from the failures of these agencies to perform their duties, particularly when the Commissioner of one of them gave the approval for the complex to proceed, and the issue of the necessity of review of the complex pursuant to a valid plan was raised repeatedly as long ago as July of 1972.

CONCLUSION

By way of conclusion, petitioners would like to note that the matters raised in this Reply Brief has a result of respondent's brief are matters which, while arising in New Jersey, involve principles of national application. It seems clear that the Clean Air Act requires good faith and cooperation between each state and the Environmental Protection Agency if the beneficial objects of the Act are to be achieved. Without a clear statement from this Court requiring compliance by the States with the Act, it will unfortunately be inevitable that a state will sacrifice the quality of the air we all breathe if necessary to realize a state project. For the additional reasons set forth herein, therefore, it is respectfully requested that certiorari be granted.

Respectfully submitted,

s/ Frederick C. Mezey
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